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Speeches in Congress

Second Speech on Foot's Resolution*

Mr. Webster having concluded the preceding speech, Mr. Benton spoke in reply, on the 20th and 21st of January, 1830. Mr. Hayne of South Carolina followed on the same side, but, after some time, gave way for a motion for adjournment. On Monday, the 25th, Mr. Hayne resumed, and concluded his argument. Mr. Webster immediately rose in reply, but yielded the floor for a motion for adjournment.

The next day (26th January, 1830) Mr. Webster took the floor and delivered the following speech, which has given such great celebrity to the debate. The circumstances connected with this remarkable effort of parliamentary eloquence are stated in the biographical memoir in the first volume of this collection.

Mr. President, — When the mariner has been tossed for many days in thick weather, and on an unknown sea, he naturally avails himself of the first pause in the storm, the earliest glance of the sun, to take his latitude, and ascertain how far the elements have driven him from his true course. Let us imitate this prudence, and, before we float farther on the waves of this debate, refer to the point from which we departed, that we may at least be able to conjecture where we now are. I ask for the reading of the resolution before the Senate.

The Secretary read the resolution, as follows: —

"*Resolved*, That the Committee on Public Lands be instructed to inquire and report the quantity of public lands remaining unsold within each State and Territory, and whether it be expedient to limit for a certain period the sales of the public lands to such lands only as have heretofore been offered for sale, and are now subject to entry at the minimum

* Delivered in the Senate of the United States on the 26th of January, 1830.

price. And, also, whether the office of Surveyor-General, and some of the land offices, may not be abolished without detriment to the public interest; or whether it be expedient to adopt measures to hasten the sales and extend more rapidly the surveys of the public lands."

We have thus heard, Sir, what the resolution is which is actually before us for consideration; and it will readily occur to every one, that it is almost the only subject about which something has not been said in the speech, running through two days, by which the Senate has been entertained by the gentleman from South Carolina. Every topic in the wide range of our public affairs, whether past or present, — every thing, general or local, whether belonging to national politics or party politics, — seems to have attracted more or less of the honorable member's attention, save only the resolution before the Senate. He has spoken of every thing but the public lands; they have escaped his notice. To that subject, in all his excursions, he has not paid even the cold respect of a passing glance.

When this debate, Sir, was to be resumed, on Thursday morning, it so happened that it would have been convenient for me to be elsewhere. The honorable member, however, did not incline to put off the discussion to another day. He had a shot, he said, to return, and he wished to discharge it. That shot, Sir, which he thus kindly informed us was coming, that we might stand out of the way, or prepare ourselves to fall by it and die with decency, has now been received. Under all advantages, and with expectation awakened by the tone which preceded it, it has been discharged, and has spent its force. It may become me to say no more of its effect, than that, if nobody is found, after all, either killed or wounded, it is not the first time, in the history of human affairs, that the vigor and success of the war have not quite come up to the lofty and sounding phrase of the manifesto.

The gentleman, Sir, in declining to postpone the debate, told the Senate, with the emphasis of his hand upon his heart, that there was something rankling *here*, which he wished to relieve. [Mr. Hayne rose, and disclaimed having used the word *rankling*.] It would not, Mr. President, be safe for the honorable member to appeal to those around him, upon the question whether he did in fact make use of that word. But he may have been unconscious of it. At any rate, it is enough that he

The Reply to Hayne

From the Painting by G. P. A. Healy, now in Faneuil Hall, Boston

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disclaims it. But still, with or without the use of that particular word, he had yet something *here*, he said, of which he wished to rid himself by an immediate reply. In this respect, Sir, I have a great advantage over the honorable gentleman. There is nothing *here*, Sir, which gives me the slightest uneasiness; neither fear, nor anger, nor that which is sometimes more troublesome than either, the consciousness of having been in the wrong. There is nothing, either originating *here*, or now received *here* by the gentleman's shot. Nothing originating here, for I had not the slightest feeling of unkindness towards the honorable member. Some passages, it is true, had occurred since our acquaintance in this body, which I could have wished might have been otherwise; but I had used philosophy and forgotten them. I paid the honorable member the attention of listening with respect to his first speech; and when he sat down, though surprised, and I must even say astonished, at some of his opinions, nothing was farther from my intention than to commence any personal warfare. Through the whole of the few remarks I made in answer, I avoided, studiously and carefully, every thing which I thought possible to be construed into disrespect. And, Sir, while there is thus nothing originating *here* which I have wished at any time, or now wish, to discharge, I must repeat, also, that nothing has been received *here* which *rankles*, or in any way gives me annoyance. I will not accuse the honorable member of violating the rules of civilized war; I will not say, that he poisoned his arrows. But whether his shafts were, or were not, dipped in that which would have caused rankling if they had reached their destination, there was not, as it happened, quite strength enough in the bow to bring them to their mark. If he wishes now to gather up those shafts, he must look for them elsewhere; they will not be found fixed and quivering in the object at which they were aimed.

The honorable member complained that I had slept on his speech. I must have slept on it, or not slept at all. The moment the honorable member sat down, his friend from Missouri rose, and, with much honeyed commendation of the speech, suggested that the impressions which it had produced were too charming and delightful to be disturbed by other sentiments or other sounds, and proposed that the Senate should adjourn. Would it have been quite amiable in me, Sir, to interrupt this

excellent good feeling? Must I not have been absolutely malicious, if I could have thrust myself forward, to destroy sensations thus pleasing? Was it not much better and kinder, both to sleep upon them myself, and to allow others also the pleasure of sleeping upon them? But if it be meant, by sleeping upon his speech, that I took time to prepare a reply to it, it is quite a mistake. Owing to other engagements, I could not employ even the interval between the adjournment of the Senate and its meeting the next morning, in attention to the subject of this debate. Nevertheless, Sir, the mere matter of fact is undoubtedly true. I did sleep on the gentleman's speech, and slept soundly. And I slept equally well on his speech of yesterday, to which I am now replying. It is quite possible that in this respect, also, I possess some advantage over the honorable member, attributable, doubtless, to a cooler temperament on my part; for, in truth, I slept upon his speeches remarkably well.

But the gentleman inquires why *he* was made the object of such a reply. Why was *he* singled out? If an attack has been made on the East, he, he assures us, did not begin it; it was made by the gentleman from Missouri. Sir, I answered the gentleman's speech because I happened to hear it; and because, also, I chose to give an answer to that speech, which, if unanswered, I thought most likely to produce injurious impressions. I did not stop to inquire who was the original drawer of the bill. I found a responsible indorser before me, and it was my purpose to hold him liable, and to bring him to his just responsibility, without delay. But, Sir, this interrogatory of the honorable member was only introductory to another. He proceeded to ask me whether I had turned upon him, in this debate, from the consciousness that I should find an overmatch, if I ventured on a contest with his friend from Missouri. If, Sir, the honorable member, *modestiæ gratia*, had chosen thus to defer to his friend, and to pay him a compliment, without intentional disparagement to others, it would have been quite according to the friendly courtesies of debate, and not at all ungrateful to my own feelings. I am not one of those, Sir, who esteem any tribute of regard, whether light and occasional, or more serious and deliberate, which may be bestowed on others, as so much unjustly withholden from themselves. But the tone and man-

ner of the gentleman's question forbid me thus to interpret it. I am not at liberty to consider it as nothing more than a civility to his friend. It had an air of taunt and disparagement, something of the loftiness of asserted superiority, which does not allow me to pass it over without notice. It was put as a question for me to answer, and so put as if it were difficult for me to answer, whether I deemed the member from Missouri an overmatch for myself, in debate here. It seems to me, Sir, that this is extraordinary language, and an extraordinary tone, for the discussions of this body.

Matches and overmatches! Those terms are more applicable elsewhere than here, and fitter for other assemblies than this. Sir, the gentleman seems to forget where and what we are. This is a Senate, a Senate of equals, of men of individual honor and personal character, and of absolute independence. We know no masters, we acknowledge no dictators. This is a hall for mutual consultation and discussion; not an arena for the exhibition of champions. I offer myself, Sir, as a match for no man; I throw the challenge of debate at no man's feet. But then, Sir, since the honorable member has put the question in a manner that calls for an answer, I will give him an answer; and I tell him, that, holding myself to be the humblest of the members here, I yet know nothing in the arm of his friend from Missouri, either alone or when aided by the arm of *his* friend from South Carolina, that need deter even me from espousing whatever opinions I may choose to espouse, from debating whenever I may choose to debate, or from speaking whatever I may see fit to say, on the floor of the Senate. Sir, when uttered as matter of commendation or compliment, I should dissent from nothing which the honorable member might say of his friend. Still less do I put forth any pretensions of my own. But when put to me as matter of taunt, I throw it back, and say to the gentleman, that he could possibly say nothing less likely than such a comparison to wound my pride of personal character. The anger of its tone rescued the remark from intentional irony, which otherwise, probably, would have been its general acceptation. But, Sir, if it be imagined that by this mutual quotation and commendation; if it be supposed that, by casting the characters of the drama, assigning to each his part, to one the attack, to another the cry of onset; or if it be

thought that, by a loud and empty vaunt of anticipated victory, any laurels are to be won here; if it be imagined, especially, that any, or all these things will shake any purpose of mine, I can tell the honorable member, once for all, that he is greatly mistaken, and that he is dealing with one of whose temper and character he has yet much to learn. Sir, I shall not allow myself, on this occasion, I hope on no occasion, to be betrayed into any loss of temper; but if provoked, as I trust I never shall be, into crimination and recrimination, the honorable member may perhaps find that, in that contest, there will be blows to take as well as blows to give; that others can state comparisons as significant, at least, as his own, and that his impunity may possibly demand of him whatever powers of taunt and sarcasm he may possess. I commend him to a prudent husbandry of his resources.

But, Sir, the Coalition! The Coalition! Ay, "the murdered Coalition!" The gentleman asks, if I were led or frighted into this debate by the spectre of the Coalition. "Was it the ghost of the murdered Coalition," he exclaims, "which haunted the member from Massachusetts; and which, like the ghost of Banquo, would never down?" "The murdered Coalition!" Sir, this charge of a coalition, in reference to the late administration, is not original with the honorable member. It did not spring up in the Senate. Whether as a fact, as an argument, or as an embellishment, it is all borrowed. He adopts it, indeed, from a very low origin, and a still lower present condition. It is one of the thousand calumnies with which the press teemed, during an excited political canvass. It was a charge, of which there was not only no proof or probability, but which was in itself wholly impossible to be true. No man of common information ever believed a syllable of it. Yet it was of that class of falsehoods, which, by continued repetition, through all the organs of detraction and abuse, are capable of misleading those who are already far misled, and of further fanning passion already kindling into flame. Doubtless it served in its day, and in greater or less degree, the end designed by it. Having done that, it has sunk into the general mass of stale and loathed calumnies. It is the very cast-off slough of a polluted and shameless press. Incapable of further mischief, it lies in the sewer, lifeless and despised. It is not now, Sir, in the power of the honorable

member to give it dignity or decency, by attempting to elevate it, and to introduce it into the Senate. He cannot change it from what it is, an object of general disgust and scorn. On the contrary, the contact, if he choose to touch it, is more likely to drag him down, down, to the place where it lies itself.

But, Sir, the honorable member was not, for other reasons, entirely happy in his allusion to the story of Banquo's murder and Banquo's ghost. It was not, I think, the friends, but the enemies of the murdered Banquo, at whose bidding his spirit would not *down*. The honorable gentleman is fresh in his reading of the English classics, and can put me right if I am wrong; but, according to my poor recollection, it was at those who had begun with caresses and ended with foul and treacherous murder that the gory locks were shaken. The ghost of Banquo, like that of Hamlet, was an honest ghost. It disturbed no innocent man. It knew where its appearance would strike terror, and who would cry out, A ghost! It made itself visible in the right quarter, and compelled the guilty and the conscience-smitten, and none others, to start, with,

> "Pr'ythee, see there! behold! — look! lo
> If I stand here, I saw him!"

THEIR eyeballs were seared (was it not so, Sir?) who had thought to shield themselves by concealing their own hand, and laying the imputation of the crime on a low and hireling agency in wickedness; who had vainly attempted to stifle the workings of their own coward consciences by ejaculating through white lips and chattering teeth, "Thou canst not say I did it!" I have misread the great poet if those who had no way partaken in the deed of the death, either found that they were, or *feared that they should be*, pushed from their stools by the ghost of the slain, or exclaimed to a spectre created by their own fears and their own remorse, "Avaunt! and quit our sight!"

There is another particular, Sir, in which the honorable member's quick perception of resemblances might, I should think, have seen something in the story of Banquo, making it not altogether a subject of the most pleasant contemplation. Those who murdered Banquo, what did they win by it? Substantial good? Permanent power? Or disappointment, rather, and sore mortification; dust and ashes, the common fate of vaulting

ambition overleaping itself? Did not even-handed justice ere long commend the poisoned chalice to their own lips? Did they not soon find that for another they had "filed their mind"? that their ambition, though apparently for the moment successful, had but put a barren sceptre in their grasp? Ay, Sir,

> "a barren sceptre in their gripe,
> *Thence to be wrenched with an unlineal hand,*
> *No son of theirs succeeding.*"

Sir, I need pursue the allusion no farther. I leave the honorable gentleman to run it out at his leisure, and to derive from it all the gratification it is calculated to administer. If he finds himself pleased with the associations, and prepared to be quite satisfied, though the parallel should be entirely completed, I had almost said, I am satisfied also; but that I shall think of. Yes, Sir, I will think of that.

In the course of my observations the other day, Mr. President, I paid a passing tribute of respect to a very worthy man, Mr. Dane of Massachusetts. It so happened that he drew the Ordinance of 1787, for the government of the Northwestern Territory. A man of so much ability, and so little pretence; of so great a capacity to do good, and so unmixed a disposition to do it for its own sake; a gentleman who had acted an important part, forty years ago, in a measure the influence of which is still deeply felt in the very matter which was the subject of debate, might, I thought, receive from me a commendatory recognition. But the honorable member was inclined to be facetious on the subject. He was rather disposed to make it matter of ridicule, that I had introduced into the debate the name of one Nathan Dane, of whom he assures us he had never before heard. Sir, if the honorable member had never before heard of Mr. Dane, I am sorry for it. It shows him less acquainted with the public men of the country than I had supposed. Let me tell him, however, that a sneer from him at the mention of the name of Mr. Dane is in bad taste. It may well be a high mark of ambition, Sir, either with the honorable gentleman or myself, to accomplish as much to make our names known to advantage, and remembered with gratitude, as Mr. Dane has accomplished. But the truth is, Sir, I suspect, that Mr. Dane lives a little too far north. He is of Massachusetts, and too near the north star to be reached by the honorable gentleman's telescope. If his

sphere had happened to range south of Mason and Dixon's line, he might, probably, have come within the scope of his vision.

I spoke, Sir, of the Ordinance of 1787, which prohibits slavery, in all future times, northwest of the Ohio, as a measure of great wisdom and foresight, and one which had been attended with highly beneficial and permanent consequences. I supposed that, on this point, no two gentlemen in the Senate could entertain different opinions. But the simple expression of this sentiment has led the gentleman, not only into a labored defence of slavery, in the abstract, and on principle, but also into a warm accusation against me, as having attacked the system of domestic slavery now existing in the Southern States. For all this, there was not the slightest foundation, in any thing said or intimated by me. I did not utter a single word which any ingenuity could torture into an attack on the slavery of the South. I said, only, that it was highly wise and useful, in legislating for the Northwestern country while it was yet a wilderness, to prohibit the introduction of slaves; and I added, that I presumed there was no reflecting and intelligent person, in the neighboring State of Kentucky, who would doubt that, if the same prohibition had been extended, at the same early period, over that commonwealth, her strength and population would, at this day, have been far greater than they are. If these opinions be thought doubtful, they are nevertheless, I trust, neither extraordinary nor disrespectful. They attack nobody and menace nobody. And yet, Sir, the gentleman's optics have discovered, even in the mere expression of this sentiment, what he calls the very spirit of the Missouri question! He represents me as making an onset on the whole South, and manifesting a spirit which would interfere with, and disturb, their domestic condition!

Sir, this injustice no otherwise surprises me, than as it is committed here, and committed without the slightest pretence of ground for it. I say it only surprises me as being done here; for I know full well, that it is, and has been, the settled policy of some persons in the South, for years, to represent the people of the North as disposed to interfere with them in their own exclusive and peculiar concerns. This is a delicate and sensitive point in Southern feeling; and of late years it has always been touched, and generally with effect, whenever the object nas been to unite the whole South against Northern men or

Northern measures. This feeling, always carefully kept alive, and maintained at too intense a heat to admit discrimination or reflection, is a lever of great power in our political machine. It moves vast bodies, and gives to them one and the same direction. But it is without adequate cause, and the suspicion which exists is wholly groundless. There is not, and never has been, a disposition in the North to interfere with these interests of the South. Such interference has never been supposed to be within the power of government; nor has it been in any way attempted. The slavery of the South has always been regarded as a matter of domestic policy, left with the States themselves, and with which the federal government had nothing to do. Certainly, Sir, I am, and ever have been, of that opinion. The gentleman, indeed, argues that slavery, in the abstract, is no evil. Most assuredly I need not say I differ with him, altogether and most widely, on that point. I regard domestic slavery as one of the greatest evils, both moral and political. But whether it be a malady, and whether it be curable, and if so, by what means; or, on the other hand, whether it be the *vulnus immedicabile* of the social system, I leave it to those whose right and duty it is to inquire and to decide. And this I believe, Sir, is, and uniformly has been, the sentiment of the North. Let us look a little at the history of this matter.

When the present Constitution was submitted for the ratification of the people, there were those who imagined that the powers of the government which it proposed to establish might, in some possible mode, be exerted in measures tending to the abolition of slavery. This suggestion would of course attract much attention in the Southern conventions. In that of Virginia, Governor Randolph said:—

"I hope there is none here, who, considering the subject in the calm light of philosophy, will make an objection dishonorable to Virginia; that, at the moment they are securing the rights of their citizens, an objection is started, that there is a spark of hope that those unfortunate men now held in bondage may, by the operation of the general government, be made free."

At the very first Congress, petitions on the subject were presented, if I mistake not, from different States. The Pennsylvania society for promoting the abolition of slavery took a lead, and laid before Congress a memorial, praying Congress to pro-

mote the abolition by such powers as it possessed. This memorial was referred, in the House of Representatives, to a select committee, consisting of Mr. Foster, of New Hampshire, Mr. Gerry of Massachusetts, Mr. Huntington of Connecticut, Mr. Lawrence of New York, Mr. Sinnickson of New Jersey, Mr. Hartley of Pennsylvania, and Mr. Parker of Virginia; all of them, Sir, as you will observe, Northern men but the last. This committee made a report, which was referred to a committee of the whole House, and there considered and discussed for several days; and being amended, although without material alteration, it was made to express three distinct propositions, on the subject of slavery and the slave-trade. First, in the words of the Constitution, that Congress could not, prior to the year 1808, prohibit the migration or importation of such persons as any of the States then existing should think proper to admit; and secondly, that Congress had authority to restrain the citizens of the United States from carrying on the African slave-trade, for the purpose of supplying foreign countries. On this proposition, our early laws against those who engage in that traffic are founded. The third proposition, and that which bears on the present question, was expressed in the following terms: —

"*Resolved*, That Congress have no authority to interfere in the emancipation of slaves, or in the treatment of them in any of the States; it remaining with the several States alone to provide rules and regulations therein which humanity and true policy may require."

This resolution received the sanction of the House of Representatives so early as March, 1790. And now, Sir, the honorable member will allow me to remind him, that not only were the select committee who reported the resolution, with a single exception, all Northern men, but also that, of the members then composing the House of Representatives, a large majority, I believe nearly two thirds, were Northern men also.

The House agreed to insert these resolutions in its journal, and from that day to this it has never been maintained or contended at the North, that Congress had any authority to regulate or interfere with the condition of slaves in the several States. No Northern gentleman, to my knowledge, has moved any such question in either House of Congress.

The fears of the South, whatever tears they might have enter-

tained, were allayed and quieted by this early decision; and so remained till they were excited afresh, without cause, but for collateral and indirect purposes. When it became necessary, or was thought so, by some political persons, to find an unvarying ground for the exclusion of Northern men from confidence and from lead in the affairs of the republic, then, and not till then, the cry was raised, and the feeling industriously excited, that the influence of Northern men in the public counsels would endanger the relation of master and slave. For myself, I claim no other merit than that this gross and enormous injustice towards the whole North has not wrought upon me to change my opinions or my political conduct. I hope I am above violating my principles, even under the smart of injury and false imputations. Unjust suspicions and undeserved reproach, whatever pain I may experience from them, will not induce me, I trust, to overstep the limits of constitutional duty, or to encroach on the rights of others. The domestic slavery of the Southern States I leave where I find it, — in the hands of their own governments. It is their affair, not mine. Nor do I complain of the peculiar effect which the magnitude of that population has had in the distribution of power under this federal government. We know, Sir, that the representation of the States in the other house is not equal. We know that great advantage in that respect is enjoyed by the slave-holding States; and we know, too, that the intended equivalent for that advantage, that is to say, the imposition of direct taxes in the same ratio, has become merely nominal, the habit of the government being almost invariably to collect its revenue from other sources and in other modes. Nevertheless, I do not complain; nor would I countenance any movement to alter this arrangement of representation. It is the original bargain, the compact; let it stand; let the advantage of it be fully enjoyed. The Union itself is too full of benefit to be hazarded in propositions for changing its original basis. I go for the Constitution as it is, and for the Union as it is. But I am resolved not to submit in silence to accusations, either against myself individually or against the North, wholly unfounded and unjust; accusations which impute to us a disposition to evade the constitutional compact, and to extend the power of the government over the internal laws and domestic condition of the States. All such accusations, wherever and whenever made, all

insinuations of the existence of any such purposes, I know and feel to be groundless and injurious. And we must confide in Southern gentlemen themselves; we must trust to those whose integrity of heart and magnanimity of feeling will lead them to a desire to maintain and disseminate truth, and who possess the means of its diffusion with the Southern public; we must leave it to them to disabuse that public of its prejudices. But in the mean time, for my own part, I shall continue to act justly, whether those towards whom justice is exercised receive it with candor or with contumely.

Having had occasion to recur to the Ordinance of 1787, in order to defend myself against the inferences which the honorable member has chosen to draw from my former observations on that subject, I am not willing now entirely to take leave of it without another remark. It need hardly be said, that that paper expresses just sentiments on the great subject of civil and religious liberty. Such sentiments were common, and abound in all our state papers of that day. But this Ordinance did that which was not so common, and which is not even now universal; that is, it set forth and declared it to be a high and binding duty of government itself to support schools and advance the means of education, on the plain reason that religion, morality, and knowledge are necessary to good government, and to the happiness of mankind. One observation further. The important provision incorporated into the Constitution of the United States, and into several of those of the States, and recently, as we have seen, adopted into the reformed constitution of Virginia, restraining legislative power in questions of private right, and from impairing the obligation of contracts, is first introduced and established, as far as I am informed, as matter of express written constitutional law, in this Ordinance of 1787. And I must add, also, in regard to the author of the Ordinance, who has not had the happiness to attract the gentleman's notice heretofore, nor to avoid his sarcasm now, that he was chairman of that select committee of the old Congress, whose report first expressed the strong sense of that body, that the old Confederation was not adequate to the exigencies of the country and recommended to the States to send delegates to the convention which formed the present Constitution.*

* See Note A, at the end of the speech.

An attempt has been made to transfer from the North to the South the honor of this exclusion of slavery from the Northwestern Territory. The journal, without argument or comment, refutes such attempts. The cession by Virginia was made in March, 1784. On the 19th of April following, a committee, consisting of Messrs. Jefferson, Chase, and Howell, reported a plan for a temporary government of the territory, in which was this article: "That, after the year 1800, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in punishment of crimes, whereof the party shall have been convicted." Mr. Spaight of North Carolina moved to strike out this paragraph. The question was put, according to the form then practised, "Shall these words stand as a part of the plan?" New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania, seven States, voted in the affirmative; Maryland, Virginia, and South Carolina, in the negative. North Carolina was divided. As the consent of nine States was necessary, the words could not stand, and were struck out accordingly. Mr. Jefferson voted for the clause, but was overruled by his colleagues.

In March of the next year (1785), Mr. King of Massachusetts, seconded by Mr. Ellery of Rhode Island, proposed the formerly rejected article, with this addition: "And that this regulation shall be an article of compact, and remain a fundamental principle of the constitutions between the thirteen original States, and each of the States described in the resolve." On this clause, which provided the adequate and thorough security, the eight Northern States at that time voted affirmatively, and the four Southern States negatively. The votes of nine States were not yet obtained, and thus the provision was again rejected by the Southern States. The perseverance of the North held out, and two years afterwards the object was attained. It is no derogation from the credit, whatever that may be, of drawing the Ordinance, that its principles had before been prepared and discussed, in the form of resolutions. If one should reason in that way, what would become of the distinguished honor of the author of the Declaration of Independence? There is not a sentiment in that paper which had not been voted and resolved in the assemblies, and other popular bodies in the country, over and over again.

But the honorable member has now found out that this gentleman, Mr. Dane, was a member of the Hartford Convention. However uninformed the honorable member may be of characters and occurrences at the North, it would seem that he has at his elbow, on this occasion, some high-minded and lofty spirit, some magnanimous and true-hearted monitor, possessing the means of local knowledge, and ready to supply the honorable member with every thing, down even to forgotten and moth-eaten two-penny pamphlets, which may be used to the disadvantage of his own country. But as to the Hartford Convention, Sir, allow me to say, that the proceedings of that body seem now to be less read and studied in New England than farther South. They appear to be looked to, not in New England, but elsewhere, for the purpose of seeing how far they may serve as a precedent. But they will not answer the purpose, they are quite too tame. The latitude in which they originated was too cold. Other conventions, of more recent existence, have gone a whole bar's length beyond it. The learned doctors of Colleton and Abbeville have pushed their commentaries on the Hartford collect so far, that the original text-writers are thrown entirely into the shade. I have nothing to do, Sir, with the Hartford Convention. Its journal, which the gentleman has quoted, I never read. So far as the honorable member may discover in its proceedings a spirit in any degree resembling that which was avowed and justified in those other conventions to which I have alluded, or so far as those proceedings can be shown to be disloyal to the Constitution, or tending to disunion, so far I shall be as ready as any one to bestow on them reprehension and censure.

Having dwelt long on this convention, and other occurrences of that day, in the hope, probably, (which will not be gratified,) that I should leave the course of this debate to follow him at length in those excursions, the honorable member returned, and attempted another object. He referred to a speech of mine in the other house, the same which I had occasion to allude to myself, the other day; and has quoted a passage or two from it, with a bold, though uneasy and laboring, air of confidence, as if he had detected in me an inconsistency. Judging from the gentleman's manner, a stranger to the course of the debate and to the point in discussion would have imagined, from so triumphant a tone, that the honorable member was about to

overwhelm me with a manifest contradiction. Any one who heard him, and who had not heard what I had, in fact, previously said, must have thought me routed and discomfited, as the gentleman had promised. Sir, a breath blows all this triumph away. There is not the slightest difference in the purport of my remarks on the two occasions. What I said here on Wednesday is in exact accordance with the opinion expressed by me in the other house in 1825. Though the gentleman had the metaphysics of Hudibras, though he were able

> "to sever and divide
> A hair 'twixt north and northwest side,"

he yet could not insert his metaphysical scissors between the fair reading of my remarks in 1825, and what I said here last week. There is not only no contradiction, no difference, but, in truth, too exact a similarity, both in thought and language, to be entirely in just taste. I had myself quoted the same speech; had recurred to it, and spoke with it open before me; and much of what I said was little more than a repetition from it. In order to make finishing work with this alleged contradiction, permit me to recur to the origin of this debate, and review its course. This seems expedient, and may be done as well now as at any time.

Well, then, its history is this. The honorable member from Connecticut moved a resolution, which constitutes the first branch of that which is now before us; that is to say, a resolution, instructing the committee on public lands to inquire into the expediency of limiting, for a certain period, the sales of the public lands, to such as have heretofore been offered for sale; and whether sundry offices connected with the sales of the lands might not be abolished without detriment to the public service. In the progress of the discussion which arose on this resolution, an honorable member from New Hampshire moved to amend the resolution, so as entirely to reverse its object; that is, to strike it all out, and insert a direction to the committee to inquire into the expediency of adopting measures to hasten the sales, and extend more rapidly the surveys, of the lands.

The honorable member from Maine* suggested that both

* Mr. Sprague.

those propositions might well enough go for consideration to the committee; and in this state of the question, the member from South Carolina addressed the Senate in his first speech. He rose, he said, to give us his own free thoughts on the public lands. I saw him rise with pleasure, and listened with expectation, though before he concluded I was filled with surprise. Certainly, I was never more surprised, than to find him following up, to the extent he did, the sentiments and opinions which the gentleman from Missouri had put forth, and which it is known he has long entertained.

I need not repeat at large the general topics of the honorable gentleman's speech. When he said yesterday that he did not attack the Eastern States, he certainly must have forgotten, not only particular remarks, but the whole drift and tenor of his speech; unless he means by not attacking, that he did not commence hostilities, but that another had preceded him in the attack. He, in the first place, disapproved of the whole course of the government, for forty years, in regard to its disposition of the public lands; and then, turning northward and eastward, and fancying he had found a cause for alleged narrowness and niggardliness in the "accursed policy" of the tariff, to which he represented the people of New England as wedded, he went on for a full hour with remarks, the whole scope of which was to exhibit the results of this policy, in feelings and in measures unfavorable to the West. I thought his opinions unfounded and erroneous, as to the general course of the government, and ventured to reply to them.

The gentleman had remarked on the analogy of other cases, and quoted the conduct of European governments towards their own subjects settling on this continent, as in point, to show that we had been harsh and rigid in selling, when we should have given the public lands to settlers without price. I thought the honorable member had suffered his judgment to be betrayed by a false analogy; that he was struck with an appearance of resemblance where there was no real similitude. I think so still. The first settlers of North America were enterprising spirits, engaged in private adventure, or fleeing from tyranny at home. When arrived here, they were forgotten by the mother country, or remembered only to be oppressed. Carried away again by the appearance of analogy, or struck with the eloquence of the

passage, the honorable member yesterday observed, that the conduct of government towards the Western emigrants, or my representation of it, brought to his mind a celebrated speech in the British Parliament. It was, Sir, the speech of Colonel Barre. On the question of the stamp act, or tea tax, I forget which, Colonel Barre had heard a member on the treasury bench argue, that the people of the United States, being British colonists, planted by the maternal care, nourished by the indulgence, and protected by the arms of England, would not grudge their mite to relieve the mother country from the heavy burden under which she groaned. The language of Colonel Barre, in reply to this, was, — "They planted by your care? Your oppression planted them in America. They fled from your tyranny, and grew by your neglect of them. So soon as you began to care for them, you showed your care by sending persons to spy out their liberties, misrepresent their character, prey upon them, and eat out their substance."

And how does the honorable gentleman mean to maintain, that language like this is applicable to the conduct of the government of the United States towards the Western emigrants, or to any representation given by me of that conduct? Were the settlers in the West driven thither by our oppression? Have they flourished only by our neglect of them? Has the government done nothing but prey upon them, and eat out their substance? Sir, this fervid eloquence of the British speaker, just when and where it was uttered, and fit to remain an exercise for the schools, is not a little out of place, when it is brought thence to be applied here, to the conduct of our own country towards her own citizens. From America to England, it may be true; from Americans to their own government, it would be strange language. Let us leave it, to be recited and declaimed by our boys against a foreign nation; not introduce it here, to recite and declaim ourselves against our own.

But I come to the point of the alleged contradiction. In my remarks on Wednesday, I contended that we could not give away gratuitously all the public lands; that we held them in trust; that the government had solemnly pledged itself to dispose of them as a common fund for the common benefit, and to sell and settle them as its discretion should dictate. Now, Sir, what contradiction does the gentleman find to this sentiment in

the speech of 1825? He quotes me as having then said, that we ought not to hug these lands as a very great treasure. Very well, Sir, supposing me to be accurately reported in that expression, what is the contradiction? I have not now said, that we should hug these lands as a favorite source of pecuniary income. No such thing. It is not my view. What I have said, and what I do say, is, that they are a common fund, to be disposed of for the common benefit, to be sold at low prices for the accommodation of settlers, keeping the object of settling the lands as much in view as that of raising money from them. This I say now, and this I have always said. Is this hugging them as a favorite treasure? Is there no difference between hugging and hoarding this fund, on the one hand, as a great treasure, and, on the other, of disposing of it at low prices, placing the proceeds in the general treasury of the Union? My opinion is, that as much is to be made of the land as fairly and reasonably may be, selling it all the while at such rates as to give the fullest effect to settlement. This is not giving it all away to the States, as the gentleman would propose; nor is it hugging the fund closely and tenaciously, as a favorite treasure; but it is, in my judgment, a just and wise policy, perfectly according with all the various duties which rest on government. So much for my contradiction. And what is it? Where is the ground of the gentleman's triumph? What inconsistency in word or doctrine has he been able to detect? Sir, if this be a sample of that discomfiture with which the honorable gentleman threatened me, commend me to the word *discomfiture* for the rest of my life.

But, after all, this is not the point of the debate; and I must now bring the gentleman back to what is the point.

The real question between me and him is, Has the doctrine been advanced at the South or the East, that the population of the West should be retarded, or at least need not be hastened, on account of its effect to drain off the people from the Atlantic States? Is this doctrine, as has been alleged, of Eastern origin? That is the question. Has the gentleman found any thing by which he can make good his accusation? I submit to the Senate, that he has entirely failed; and, as far as this debate has shown, the only person who has advanced such sentiments is a gentleman from South Carolina, and a friend of the honorable member himself. The honorable gentleman has given no

answer to this; there is none which can be given. The simple fact, while it requires no comment to enforce it, defies all argument to refute it. I could refer to the speeches of another Southern gentleman, in years before, of the same general character, and to the same effect, as that which has been quoted; but I will not consume the time of the Senate by the reading of them.

So then, Sir, New England is guiltless of the policy of retarding Western population, and of all envy and jealousy of the growth of the new States. Whatever there be of that policy in the country, no part of it is hers. If it has a local habitation, the honorable member has probably seen by this time where to look for it; and if it now has received a name, he has himself christened it.

We approach, at length, Sir, to a more important part of the honorable gentleman's observations. Since it does not accord with my views of justice and policy to give away the public lands altogether, as a mere matter of gratuity, I am asked by the honorable gentleman on what ground it is that I consent to vote them away in particular instances. How, he inquires, do I reconcile with these professed sentiments, my support of measures appropriating portions of the lands to particular roads, particular canals, particular rivers, and particular institutions of education in the West? This leads, Sir, to the real and wide difference in political opinion between the honorable gentleman and myself. On my part, I look upon all these objects as connected with the common good, fairly embraced in its object and its terms; he, on the contrary, deems them all, if good at all, only local good. This is our difference. The interrogatory which he proceeded to put, at once explains this difference. "What interest," asks he, "has South Carolina in a canal in Ohio?" Sir, this very question is full of significance. It develops the gentleman's whole political system; and its answer expounds mine. Here we differ. I look upon a road over the Alleghanies, a canal round the falls of the Ohio, or a canal or railway from the Atlantic to the Western waters, as being an object large and extensive enough to be fairly said to be for the common benefit. The gentleman thinks otherwise, and this is the key to his construction of the powers of the government. He may well ask what interest has South Carolina in a

canal in Ohio. On his system, it is true, she has no interest. On that system, Ohio and Carolina are different governments, and different countries; connected here, it is true, by some slight and ill-defined bond of union, but in all main respects separate and diverse. On that system, Carolina has no more interest in a canal in Ohio than in Mexico. The gentleman, therefore, only follows out his own principles; he does no more than arrive at the natural conclusions of his own doctrines; he only announces the true results of that creed which he has adopted himself, and would persuade others to adopt, when he thus declares that South Carolina has no interest in a public work in Ohio.

Sir, we narrow-minded people of New England do not reason thus. Our *notion* of things is entirely different. We look upon the States, not as separated, but as united. We love to dwell on that union, and on the mutual happiness which it has so much promoted, and the common renown which it has so greatly contributed to acquire. In our contemplation, Carolina and Ohio are parts of the same country; States, united under the same general government, having interests, common, associated, intermingled. In whatever is within the proper sphere of the constitutional power of this government, we look upon the States as one. We do not impose geographical limits to our patriotic feeling or regard; we do not follow rivers and mountains, and lines of latitude, to find boundaries, beyond which public improvements do not benefit us. We who come here, as agents and representatives of these narrow-minded and selfish men of New England, consider ourselves as bound to regard with an equal eye the good of the whole, in whatever is within our powers of legislation. Sir, if a railroad or canal, beginning in South Carolina and ending in South Carolina, appeared to me to be of national importance and national magnitude, believing, as I do, that the power of government extends to the encouragement of works of that description, if I were to stand up here and ask, What interest has Massachusetts in a railroad in South Carolina? I should not be willing to face my constituents. These same narrow-minded men would tell me, that they had sent me to act for the whole country, and that one who possessed too little comprehension, either of intellect or feeling, one who was not large enough, both in mind and in

heart, to embrace the whole, was not fit to be intrusted with the interest of any part.

Sir, I do not desire to enlarge the powers of the government by unjustifiable construction, nor to exercise any not within a fair interpretation. But when it is believed that a power does exist, then it is, in my judgment, to be exercised for the general benefit of the whole. So far as respects the exercise of such a power, the States are one. It was the very object of the Constitution to create unity of interests to the extent of the powers of the general government. In war and peace we are one; in commerce, one; because the authority of the general government reaches to war and peace, and to the regulation of commerce. I have never seen any more difficulty in erecting lighthouses on the lakes, than on the ocean; in improving the harbors of inland seas, than if they were within the ebb and flow of the tide; or in removing obstructions in the vast streams of the West, more than in any work to facilitate commerce on the Atlantic coast. If there be any power for one, there is power also for the other; and they are all and equally for the common good of the country.

There are other objects, apparently more local, or the benefit of which is less general, towards which, nevertheless, I have concurred with others, to give aid by donations of land. It is proposed to construct a road, in or through one of the new States, in which this government possesses large quantities of land. Have the United States no right, or, as a great and untaxed proprietor, are they under no obligation to contribute to an object thus calculated to promote the common good of all the proprietors, themselves included? And even with respect to education, which is the extreme case, let the question be considered. In the first place, as we have seen, it was made matter of compact with these States, that they should do their part to promote education. In the next place, our whole system of land laws proceeds on the idea that education is for the common good; because, in every division, a certain portion is uniformly reserved and appropriated for the use of schools. And, finally, have not these new States singularly strong claims, founded on the ground already stated, that the government is a great untaxed proprietor, in the ownership of the soil? It is a consideration of great importance, that probably there is in no part of

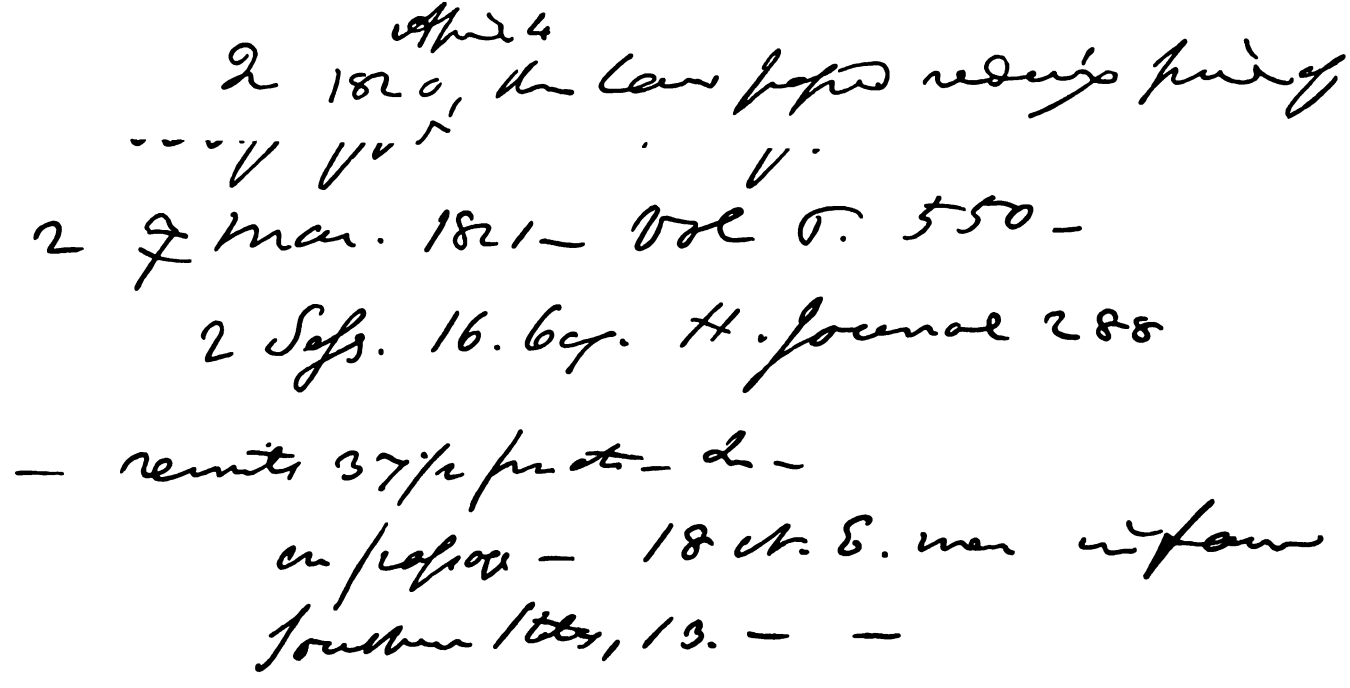
the country, or of the world, so great call for the means of education, as in these new States, owing to the vast numbers of persons within those ages in which education and instruction are usually received, if received at all. This is the natural consequence of recency of settlement and rapid increase. The census of these States shows how great a proportion of the whole population occupies the classes between infancy and manhood. These are the wide fields, and here is the deep and quick soil for the seeds of knowledge and virtue; and this is the favored season, the very spring-time for sowing them. Let them be disseminated without stint. Let them be scattered with a bountiful hand, broadcast. Whatever the government can fairly do towards these objects, in my opinion, ought to be done.

These, Sir, are the grounds, succinctly stated, on which my votes for grants of lands for particular objects rest; while I maintain, at the same time, that it is all a common fund, for the common benefit. And reasons like these, I presume, have influenced the votes of other gentlemen from New England. Those who have a different view of the powers of the government, of course, come to different conclusions, on these, as on other questions. I observed, when speaking on this subject before, that if we looked to any measure, whether for a road, a canal, or any thing else, intended for the improvement of the West, it would be found that, if the New England *ayes* were struck out of the lists of votes, the Southern *noes* would always have rejected the measure. The truth of this has not been denied, and cannot be denied. In stating this, I thought it just to ascribe it to the constitutional scruples of the South, rather than to any other less favorable or less charitable cause. But no sooner had I done this, than the honorable gentleman asks if I reproach him and his friends with their constitutional scruples. Sir, I reproach nobody. I stated a fact, and gave the most respectful reason for it that occurred to me. The gentleman cannot deny the fact; he may, if he choose, disclaim the reason. It is not long since I had occasion, in presenting a petition from his own State, to account for its being intrusted to my hands, by saying, that the constitutional opinions of the gentleman and his worthy colleague prevented them from supporting it. Sir, did I state this as matter of reproach? Far from it. Did I attempt to find any other cause than an honest

one for these scruples? Sir, I did not. It did not become me to doubt or to insinuate that the gentleman had either changed his sentiments, or that he had made up a set of constitutional opinions accommodated to any particular combination of political occurrences. Had I done so, I should have felt, that, while I was entitled to little credit in thus questioning other people's motives, I justified the whole world in suspecting my own. But how has the gentleman returned this respect for others' opinions? His own candor and justice, how have they been exhibited towards the motives of others, while he has been at so much pains to maintain, what nobody has disputed, the purity of his own? Why, Sir, he has asked *when*, and *how*, and *why* New England votes were found going for measures favorable to the West. He has demanded to be informed whether all this did not begin in 1825, and while the election of President was still pending.

Sir, to these questions retort would be justified; and it is both cogent and at hand. Nevertheless, I will answer the inquiry, not by retort, but by facts. I will tell the gentleman *when*, and *how*, and *why* New England has supported measures favorable to the West. I have already referred to the early history of the government, to the first acquisition of the lands, to the original laws for disposing of them, and for governing the territories where they lie; and have shown the influence of New England men and New England principles in all these leading measures. I should not be pardoned were I to go over that ground again. Coming to more recent times, and to measures of a less general character, I have endeavored to prove that every thing of this kind, designed for Western improvement, has depended on the votes of New England; all this is true beyond the power of contradiction. And now, Sir, there are two measures to which I will refer, not so ancient as to belong to the early history of the public lands, and not so recent as to be on this side of the period when the gentleman charitably imagines a new direction may have been given to New England feeling and New England votes. These measures, and the New England votes in support of them, may be taken as samples and specimens of all the rest.

In 1820 (observe, Mr. President, in 1820) the people of the West besought Congress for a reduction in the price of lands.



THE REDUCTION OF THE PRICE OF PUBLIC LANDS

Facsimile of Webster's Notes for the "When, How, and Why" Passage in the Reply to Hayne.

In favor of that reduction, New England, with a delegation of forty members in the other house, gave thirty-three votes, and one only against it. The four Southern States, with more than fifty members, gave thirty-two votes for it, and seven against it. Again, in 1821 (observe again, Sir, the time), the law passed for the relief of the purchasers of the public lands. This was a measure of vital importance to the West, and more especially to the Southwest. It authorized the relinquishment of contracts for lands which had been entered into at high prices, and a reduction in other cases of not less than thirty-seven and a half per cent. on the purchase-money. Many millions of dollars, six or seven, I believe, probably much more, were relinquished by this law. On this bill, New England, with her forty members, gave more affirmative votes than the four Southern States, with their fifty-two or fifty-three members. These two are far the most important general measures respecting the public lands which have been adopted within the last twenty years. They took place in 1820 and 1821. That is the time *when*.

As to the manner *how*, the gentleman already sees that it was by voting in solid column for the required relief; and, lastly, as to the cause *why*, I tell the gentleman it was because the members from New England thought the measures just and salutary; because they entertained towards the West neither envy, hatred, nor malice; because they deemed it becoming them, as just and enlightened public men, to meet the exigency which had arisen in the West with the appropriate measure of relief; because they felt it due to their own characters, and the characters of their New England predecessors in this government, to act towards the new States in the spirit of a liberal, patronizing, magnanimous policy. So much, Sir, for the cause *why;* and I hope that by this time, Sir, the honorable gentleman is satisfied; if not, I do not know *when*, or *how*, or *why* he ever will be.

Having recurred to these two important measures, in answer to the gentleman's inquiries, I must now beg permission to go back to a period somewhat earlier, for the purpose of still further showing how much, or rather how little, reason there is for the gentleman's insinuation that political hopes or fears, or party associations, were the grounds of these New England votes. And after what has been said, I hope it may be forgiven me if I allude to some political opinions and votes of my own,

of very little public importance certainly, but which, from the time at which they were given and expressed, may pass for good witnesses on this occasion.

This government, Mr. President, from its origin to the peace of 1815, had been too much engrossed with various other important concerns to be able to turn its thoughts inward, and look to the development of its vast internal resources. In the early part of President Washington's administration, it was fully occupied with completing its own organization, providing for the public debt, defending the frontiers, and maintaining domestic peace. Before the termination of that administration, the fires of the French Revolution blazed forth, as from a new-opened volcano, and the whole breadth of the ocean did not secure us from its effects. The smoke and the cinders reached us, though not the burning lava. Difficult and agitating questions, embarrassing to government and dividing public opinion, sprung out of the new state of our foreign relations, and were succeeded by others, and yet again by others, equally embarrassing and equally exciting division and discord, through the long series of twenty years, till they finally issued in the war with England. Down to the close of that war, no distinct, marked, and deliberate attention had been given, or could have been given, to the internal condition of the country, its capacities of improvement, or the constitutional power of the government in regard to objects connected with such improvement.

The peace, Mr. President, brought about an entirely new and a most interesting state of things; it opened to us other prospects and suggested other duties. We ourselves were changed, and the whole world was changed. The pacification of Europe, after June, 1815, assumed a firm and permanent aspect. The nations evidently manifested that they were disposed for peace. Some agitation of the waves might be expected, even after the storm had subsided, but the tendency was, strongly and rapidly, towards settled repose.

It so happened, Sir, that I was at that time a member of Congress, and, like others, naturally turned my thoughts to the contemplation of the recently altered condition of the country and of the world. It appeared plainly enough to me, as well as to wiser and more experienced men, that the policy of the government would naturally take a start in a new direction; because

new directions would necessarily be given to the pursuits and occupations of the people. We had pushed our commerce far and fast, under the advantage of a neutral flag. But there were now no longer flags, either neutral or belligerent. The harvest of neutrality had been great, but we had gathered it all. With the peace of Europe, it was obvious there would spring up in her circle of nations a revived and invigorated spirit of trade, and a new activity in all the business and objects of civilized life Hereafter, our commercial gains were to be earned only by success in a close and intense competition. Other nations would produce for themselves, and carry for themselves, and manufacture for themselves, to the full extent of their abilities. The crops of our plains would no longer sustain European armies, nor our ships longer supply those whom war had rendered unable to supply themselves. It was obvious, that, under these circumstances, the country would begin to survey itself, and to estimate its own capacity of improvement.

And this improvement, — how was it to be accomplished, and who was to accomplish it? We were ten or twelve millions of people, spread over almost half a world. We were more than twenty States, some stretching along the same seaboard, some along the same line of inland frontier, and others on opposite banks of the same vast rivers. Two considerations at once presented themselves with great force, in looking at this state of things. One was, that that great branch of improvement which consisted in furnishing new facilities of intercourse necessarily ran into different States in every leading instance, and would benefit the citizens of all such States. No one State, therefore, in such cases, would assume the whole expense, nor was the coöperation of several States to be expected. Take the instance of the Delaware breakwater. It will cost several millions of money. Would Pennsylvania alone ever have constructed it? Certainly never, while this Union lasts, because it is not for her sole benefit. Would Pennsylvania, New Jersey, and Delaware have united to accomplish it at their joint expense? Certainly not, for the same reason. It could not be done, therefore, but by the general government. The same may be said of the large inland undertakings, except that, in them, government, instead of bearing the whole expense, coöperates with others who bear a part. The other consideration is, that the United States have the

means. They enjoy the revenues derived from commerce, and the States have no abundant and easy sources of public income. The custom-houses fill the general treasury, while the States have scanty resources, except by resort to heavy direct taxes.

Under this view of things, I thought it necessary to settle, at least for myself, some definite notions with respect to the powers of the government in regard to internal affairs. It may not savor too much of self-commendation to remark, that, with this object, I considered the Constitution, its judicial construction, its contemporaneous exposition, and the whole history of the legislation of Congress under it; and I arrived at the conclusion, that government had power to accomplish sundry objects, or aid in their accomplishment, which are now commonly spoken of as INTERNAL IMPROVEMENTS. That conclusion, Sir, may have been right, or it may have been wrong. I am not about to argue the grounds of it at large. I say only, that it was adopted and acted on even so early as in 1816. Yes, Mr. President, I made up my opinion, and determined on my intended course of political conduct, on these subjects, in the Fourteenth Congress, in 1816. And now, Mr. President, I have further to say, that I made up these opinions, and entered on this course of political conduct, *Teucro duce.** Yes, Sir, I pursued in all this a South Carolina track on the doctrines of internal improvement. South Carolina, as she was then represented in the other house, set forth in 1816 under a fresh and leading breeze, and I was among the followers. But if my leader sees new lights and turns a sharp corner, unless I see new lights also, I keep straight on in the same path. I repeat, that leading gentlemen from South Carolina were first and foremost in behalf of the doctrines of internal improvements, when those doctrines came first to be considered and acted upon in Congress. The debate on the bank question, on the tariff of 1816, and on the direct tax, will show who was who, and what was what, at that time.

The tariff of 1816, (one of the plain cases of oppression and usurpation, from which, if the government does not recede, individual States may justly secede from the government,) is, Sir, in truth, a South Carolina tariff, supported by South Carolina

* Mr. Calhoun, when this speech was made, was President of the Senate, and Vice-President of the United States.

votes. But for those votes, it could not have passed in the form in which it did pass; whereas, if it had depended on Massachusetts votes, it would have been lost. Does not the honorable gentleman well know all this? There are certainly those who do, full well, know it all. I do not say this to reproach South Carolina. I only state the fact; and I think it will appear to be true, that among the earliest and boldest advocates of the tariff, as a measure of protection, and on the express ground of protection, were leading gentlemen of South Carolina in Congress. I did not then, and cannot now, understand their language in any other sense. While this tariff of 1816 was under discussion in the House of Representatives, an honorable gentleman from Georgia, now of this house,* moved to reduce the proposed duty on cotton. He failed, by four votes, South Carolina giving three votes (enough to have turned the scale) against his motion. The act, Sir, then passed, and received on its passage the support of a majority of the Representatives of South Carolina present and voting. This act is the first in the order of those now denounced as plain usurpations. We see it daily in the list, by the side of those of 1824 and 1828, as a case of manifest oppression, justifying disunion. I put it home to the honorable member from South Carolina, that his own State was not only "art and part" in this measure, but the *causa causans*. Without her aid, this seminal principle of mischief, this root of Upas, could not have been planted. I have already said, and it is true, that this act proceeded on the ground of protection. It interfered directly with existing interests of great value and amount. It cut up the Calcutta cotton trade by the roots, but it passed, nevertheless, and it passed on the principle of protecting manufactures, on the principle against free trade, on the principle opposed to that *which lets us alone*.†

Such, Mr. President, were the opinions of important and leading gentlemen from South Carolina, on the subject of internal improvement, in 1816. I went out of Congress the next year, and, returning again in 1823, thought I found South Carolina where I had left her. I really supposed that all things remained as they were, and that the South Carolina doctrine of internal improvements would be defended by the same eloquent voices,

* Mr. Forsyth.

† See Note B, at the end of the speech.

and the same strong arms, as formerly. In the lapse of these six years, it is true, political associations had assumed a new aspect and new divisions. A strong party had arisen in the South hostile to the doctrine of internal improvements. Anti-consolidation was the flag under which this party fought; and its supporters inveighed against internal improvements, much after the manner in which the honorable gentleman has now inveighed against them, as part and parcel of the system of consolidation. Whether this party arose in South Carolina itself, or in the neighborhood, is more than I know. I think the latter. However that may have been, there were those found in South Carolina ready to make war upon it, and who did make intrepid war upon it. Names being regarded as things in such controversies, they bestowed on the anti-improvement gentlemen the appellation of Radicals. Yes, Sir, the appellation of Radicals, as a term of distinction applicable and applied to those who denied the liberal doctrines of internal improvement, originated, according to the best of my recollection, somewhere between North Carolina and Georgia. Well, Sir, these mischievous Radicals were to be put down, and the strong arm of South Carolina was stretched out to put them down. About this time I returned to Congress. The battle with the Radicals had been fought, and our South Carolina champions of the doctrines of internal improvement had nobly maintained their ground, and were understood to have achieved a victory. We looked upon them as conquerors. They had driven back the enemy with discomfiture, a thing, by the way, Sir, which is not always performed when it is promised. A gentleman to whom I have already referred in this debate had come into Congress, during my absence from it, from South Carolina, and had brought with him a high reputation for ability. He came from a school with which we had been acquainted, *et noscitur a sociis.* I hold in my hand, Sir, a printed speech of this distinguished gentleman,* "ON INTERNAL IMPROVEMENTS," delivered about the period to which I now refer, and printed with a few introductory remarks upon *consolidation;* in which, Sir, I think he quite consolidated the arguments of his opponents, the Radicals, if to *crush* be to consolidate. I give you a short but significant quotation from

* Mr. McDuffie.

these remarks. He is speaking of a pamphlet, then recently published, entitled "Consolidation"; and having alluded to the question of renewing the charter of the former Bank of the United States, he says:—

"Moreover, in the early history of parties, and when Mr. Crawford advocated a renewal of the old charter, it was considered a Federal measure; which internal improvement *never was*, as this author erroneously states. This latter measure originated in the administration of Mr. Jefferson, with the appropriation for the Cumberland Road; and was first proposed, *as a system*, by Mr. Calhoun, and carried through the House of Representatives by a large majority of the Republicans, including almost every one of the leading men who carried us through the late war."

So, then, internal improvement is not one of the Federal heresies. One paragraph more, Sir:—

"The author in question, not content with denouncing as Federalists, General Jackson, Mr. Adams, Mr. Calhoun, and the majority of the South Carolina delegation in Congress, modestly extends the denunciation to Mr. Monroe and the whole Republican party. Here are his words:—'During the administration of Mr. Monroe much has passed which the Republican party would be glad to approve if they could!! But the principal feature, and that which has chiefly elicited these observations, is the renewal of the System of Internal Improvements.' Now this measure was adopted by a vote of 115 to 86 of a Republican Congress, and sanctioned by a Republican President. Who, then, is this author, who assumes the high prerogative of denouncing, in the name of the Republican party, the Republican administration of the country? A denunciation including within its sweep *Calhoun, Lowndes, and Cheves*, men who will be regarded as the brightest ornaments of South Carolina, and the strongest pillars of the Republican party, as long as the late war shall be remembered, and talents and patriotism shall be regarded as the proper objects of the admiration and gratitude of a free people!!"

Such are the opinions, Sir, which were maintained by South Carolina gentlemen, in the House of Representatives, on the subject of internal improvements, when I took my seat there as a member from Massachusetts in 1823. But this is not all. We had a bill before us, and passed it in that house, entitled, "An Act to procure the necessary surveys, plans, and estimates upon the subject of roads and canals." It authorized the Pres-

ident to cause surveys and estimates to be made of the routes of such roads and canals as he might deem of national importance in a commercial or military point of view, or for the transportation of the mail, and appropriated thirty thousand dollars out of the treasury to defray the expense. This act, though preliminary in its nature, covered the whole ground. It took for granted the complete power of internal improvement, as far as any of its advocates had ever contended for it. Having passed the other house, the bill came up to the Senate, and was here considered and debated in April, 1824. The honorable member from South Carolina was a member of the Senate at that time. While the bill was under consideration here, a motion was made to add the following proviso: — "*Provided*, That nothing herein contained shall be construed to affirm *or admit* a power in Congress, on their own authority, to make roads or canals within any of the States of the Union." The yeas and nays were taken on this proviso, and the honorable member voted *in the negative!* The proviso failed.

A motion was then made to add this proviso, viz.: — "*Provided*, That the faith of the United States is hereby pledged, that no money shall ever be expended for roads or canals, except it shall be among the several States, and in the same proportion as direct taxes are laid and assessed by the provisions of the Constitution." The honorable member voted *against this proviso* also, and it failed. The bill was then put on its passage, and the honorable member voted *for it*, and it passed, and became a law.

Now, it strikes me, Sir, that there is no maintaining these votes, but upon the power of internal improvement, in its broadest sense. In truth, these bills for surveys and estimates have always been considered as test questions; they show who is for and who against internal improvement. This law itself went the whole length, and assumed the full and complete power. The gentleman's votes sustained that power, in every form in which the various propositions to amend presented it. He went for the entire and unrestrained authority, without consulting the States, and without agreeing to any proportionate distribution. And now suffer me to remind you, Mr. President, that it is this very same power, thus sanctioned, in every form, by the gentleman's own opinion, which is so plain and manifest a usurpation, that

the State of South Carolina is supposed to be justified in refusing submission to any laws carrying the power into effect. Truly, Sir, is not this a little too hard? May we not crave some mercy, under favor and protection of the gentleman's own authority? Admitting that a road, or a canal, must be written down flat usurpation as was ever committed, may we find no mitigation in our respect for his place, and his vote, as one that knows the law?

The tariff, which South Carolina had an efficient hand in establishing, in 1816, and this asserted power of internal improvement, advanced by her in the same year, and, as we have seen, approved and sanctioned by her Representatives in 1824, these two measures are the great grounds on which she is now thought to be justified in breaking up the Union, if she sees fit to break it up!

I may now safely say, I think, that we have had the authority of leading and distinguished gentlemen from South Carolina in support of the doctrine of internal improvement. I repeat, that, up to 1824, I for one followed South Carolina; but when that star, in its ascension, veered off in an unexpected direction, I relied on its light no longer.

Here the Vice-President said, "Does the chair understand the gentleman from Massachusetts to say that the person now occupying the chair of the Senate has changed his opinions on the subject of internal improvements?"

From nothing ever said to me, Sir, have I had reason to know of any change in the opinions of the person filling the chair of the Senate. If such change has taken place, I regret it. I speak generally of the State of South Carolina. Individuals we know there are, who hold opinions favorable to the power. An application for its exercise, in behalf of a public work in South Carolina itself, is now pending, I believe, in the other house, presented by members from that State.

I have thus, Sir, perhaps not without some tediousness of detail, shown, if I am in error on the subject of internal improvement, how, and in what company, I fell into that error. If I am wrong, it is apparent who misled me.

I go to other remarks of the honorable member; and I have to complain of an entire misapprehension of what I said on the

subject of the national debt, though I can hardly perceive how any one could misunderstand me. What I said was, not that I wished to put off the payment of the debt, but, on the contrary, that I had always voted for every measure for its reduction, as uniformly as the gentleman himself. He seems to claim the exclusive merit of a disposition to reduce the public charge. I do not allow it to him. As a debt, I was, I am for paying it, because it is a charge on our finances, and on the industry of the country. But I observed, that I thought I perceived a morbid fervor on that subject, an excessive anxiety to pay off the debt, not so much because it is a debt simply, as because, while it lasts, it furnishes one objection to disunion. It is, while it continues, a tie of common interest. I did not impute such motives to the honorable member himself, but that there is such a feeling in existence I have not a particle of doubt. The most I said was, that if one effect of the debt was to strengthen our Union, that effect itself was not regretted by me, however much others might regret it. The gentleman has not seen how to reply to this, otherwise than by supposing me to have advanced the doctrine that a national debt is a national blessing. Others, I must hope, will find much less difficulty in understanding me. I distinctly and pointedly cautioned the honorable member not to understand me as expressing an opinion favorable to the continuance of the debt. I repeated this caution, and repeated it more than once; but it was thrown away.

On yet another point, I was still more unaccountably misunderstood. The gentleman had harangued against "consolidation." I told him, in reply, that there was one kind of consolidation to which I was attached, and that was the consolidation of our Union; that this was precisely that consolidation to which I feared others were not attached, and that such consolidation was the very end of the Constitution, the leading object, as they had informed us themselves, which its framers had kept in view. I turned to their communication,* and read their very words, "the consolidation of the Union," and expressed my devotion to this sort of consolidation. I said, in terms, that I wished not in the slightest degree to augment the powers of this government; that my object was to preserve, not to enlarge;

* The letter of the Federal Convention to the Congress of the Confederation, transmitting the plan of the Constitution.

and that by consolidating the Union I understood no more than the strengthening of the Union, and perpetuating it. Having been thus explicit, having thus read from the printed book the precise words which I adopted, as expressing my own sentiments, it passes comprehension how any man could understand me as contending for an extension of the powers of the government, or for consolidation in that odious sense in which it means an accumulation, in the federal government, of the powers properly belonging to the States.

I repeat, Sir, that, in adopting the sentiment of the framers of the Constitution, I read their language audibly, and word for word; and I pointed out the distinction, just as fully as I have now done, between the consolidation of the Union and that other obnoxious consolidation which I disclaimed. And yet the honorable member misunderstood me. The gentleman had said that he wished for no fixed revenue, — not a shilling. If by a word he could convert the Capitol into gold, he would not do it. Why all this fear of revenue? Why, Sir, because, as the gentleman told us, it tends to consolidation. Now this can mean neither more nor less than that a common revenue is a common interest, and that all common interests tend to preserve the union of the States. I confess I like that tendency; if the gentleman dislikes it, he is right in deprecating a shilling of fixed revenue. So much, Sir, for consolidation.

As well as I recollect the course of his remarks, the honorable gentleman next recurred to the subject of the tariff. He did not doubt the word must be of unpleasant sound to me, and proceeded, with an effort neither new nor attended with new success, to involve me and my votes in inconsistency and contradiction. I am happy the honorable gentleman has furnished me an opportunity of a timely remark or two on that subject. I was glad he approached it, for it is a question I enter upon without fear from any body. The strenuous toil of the gentleman has been to raise an inconsistency between my dissent to the tariff in 1824, and my vote in 1828. It is labor lost. He pays undeserved compliment to my speech in 1824; but this is to raise me high, that my fall, as he would have it, in 1828, may be more signal. Sir, there was no fall. Between the ground I stood on in 1824 and that I took in 1828, there was not only no precipice, but no declivity. It was a change of position to meet new

circumstances, but on the same level. A plain tale explains the whole matter. In 1816 I had not acquiesced in the tariff, then supported by South Carolina. To some parts of it, especially, I felt and expressed great repugnance. I held the same opinions in 1820, at the meeting in Faneuil Hall, to which the gentleman has alluded. I said then, and say now, that, as an original question, the authority of Congress to exercise the revenue power, with direct reference to the protection of manufactures, is a questionable authority, far more questionable, in my judgment, than the power of internal improvements. I must confess, Sir, that in one respect some impression has been made on my opinions lately. Mr. Madison's publication has put the power in a very strong light. He has placed it, I must acknowledge, upon grounds of construction and argument which seem impregnable. But even if the power were doubtful, on the face of the Constitution itself, it had been assumed and asserted in the first revenue law ever passed under that same Constitution; and on this ground, as a matter settled by contemporaneous practice, I had refrained from expressing the opinion that the tariff laws transcended constitutional limits, as the gentleman supposes. What I did say at Faneuil Hall, as far as I now remember, was, that this was originally matter of doubtful construction. The gentleman himself, I suppose, thinks there is no doubt about it, and that the laws are plainly against the Constitution. Mr. Madison's letters, already referred to, contain, in my judgment, by far the most able exposition extant of this part of the Constitution. He has satisfied me, so far as the practice of the government had left it an open question.

With a great majority of the Representatives of Massachusetts, I voted against the tariff of 1824. My reasons were then given, and I will not now repeat them. But, notwithstanding our dissent, the great States of New York, Pennsylvania, Ohio, and Kentucky went for the bill, in almost unbroken column, and it passed. Congress and the President sanctioned it, and it became the law of the land. What, then, were we to do? Our only option was, either to fall in with this settled course of public policy, and accommodate ourselves to it as well as we could, or to embrace the South Carolina doctrine, and talk of nullifying the statute by State interference.

This last alternative did not suit our principles, and of course

we adopted the former. In 1827, the subject came again before Congress, on a proposition to afford some relief to the branch of wool and woollens. We looked upon the system of protection as being fixed and settled. The law of 1824 remained. It had gone into full operation, and, in regard to some objects intended by it, perhaps most of them, had produced all its expected effects. No man proposed to repeal it; no man attempted to renew the general contest on its principle. But, owing to subsequent and unforeseen occurrences, the benefit intended by it to wool and woollen fabrics had not been realized. Events not known here when the law passed had taken place, which defeated its object in that particular respect. A measure was accordingly brought forward to meet this precise deficiency, to remedy this particular defect. It was limited to wool and woollens. Was ever any thing more reasonable? If the policy of the tariff laws had become established in principle, as the permanent policy of the government, should they not be revised and amended, and made equal, like other laws, as exigencies should arise, or justice require? Because we had doubted about adopting the system, were we to refuse to cure its manifest defects, after it had been adopted, and when no one attempted its repeal? And this, Sir, is the inconsistency so much bruited. I had voted against the tariff of 1824, but it passed; and in 1827 and 1828, I voted to amend it, in a point essential to the interest of my constituents. Where is the inconsistency? Could I do otherwise? Sir, does political consistency consist in always giving negative votes? Does it require of a public man to refuse to concur in amending laws, because they passed against his consent? Having voted against the tariff originally, does consistency demand that I should do all in my power to maintain an unequal tariff, burdensome to my own constituents in many respects, favorable in none? To consistency of that sort, I lay no claim. And there is another sort to which I lay as little, and that is, a kind of consistency by which persons feel themselves as much bound to oppose a proposition after it has become a law of the land as before.

The bill of 1827, limited, as I have said, to the single object in which the tariff of 1824 had manifestly failed in its effect, passed the House of Representatives, but was lost here. We

had then the act of 1828. I need not recur to the history of a measure so recent. Its enemies spiced it with whatsoever they thought would render it distasteful; its friends took it, drugged as it was. Vast amounts of property, many millions, had been invested in manufactures, under the inducements of the act of 1824. Events called loudly, as I thought, for further regulation to secure the degree of protection intended by that act. I was disposed to vote for such regulation, and desired nothing more; but certainly was not to be bantered out of my purpose by a threatened augmentation of duty on molasses, put into the bill for the avowed purpose of making it obnoxious. The vote may have been right or wrong, wise or unwise; but it is little less than absurd to allege against it an inconsistency with opposition to the former law.

Sir, as to the general subject of the tariff, I have little now to say. Another opportunity may be presented. I remarked the other day, that this policy did not begin with us in New England; and yet, Sir, New England is charged with vehemence as being favorable, or charged with equal vehemence as being unfavorable, to the tariff policy, just as best suits the time, place, and occasion for making some charge against her. The credulity of the public has been put to its extreme capacity of false impression relative to her conduct in this particular. Through all the South, during the late contest, it was New England policy and a New England administration that were afflicting the country with a tariff beyond all endurance; while on the other side of the Alleghanies even the act of 1828 itself, the very sublimated essence of oppression, according to Southern opinions, was pronounced to be one of those blessings for which the West was indebted to the "generous South."

With large investments in manufacturing establishments, and many and various interests connected with and dependent on them, it is not to be expected that New England, any more than other portions of the country, will now consent to any measure destructive or highly dangerous. The duty of the government, at the present moment, would seem to be to preserve, not to destroy; to maintain the position which it has assumed; and, for one, I shall feel it an indispensable obligation to hold it steady, as far as in my power, to that degree of protection which it has undertaken to bestow. No more of the tariff.

Professing to be provoked by what he chose to consider a charge made by me against South Carolina, the honorable member, Mr. President, has taken up a new crusade against New England. Leaving altogether the subject of the public lands, in which his success, perhaps, had been neither distinguished nor satisfactory, and letting go, also, of the topic of the tariff, he sallied forth in a general assault on the opinions, politics, and parties of New England, as they have been exhibited in the last thirty years. This is natural. The "narrow policy" of the public lands had proved a legal settlement in South Carolina, and was not to be removed. The "accursed policy" of the tariff, also, had established the fact of its birth and parentage in the same State. No wonder, therefore, the gentleman wished to carry the war, as he expressed it, into the enemy's country. Prudently willing to quit these subjects, he was, doubtless, desirous of fastening on others, which could not be transferred south of Mason and Dixon's line. The politics of New England became his theme; and it was in this part of his speech, I think, that he menaced me with such sore discomfiture. Discomfiture! Why, Sir, when he attacks any thing which I maintain, and overthrows it, when he turns the right or left of any position which I take up, when he drives me from any ground I choose to occupy, he may then talk of discomfiture, but not till that distant day. What has he done? Has he maintained his own charges? Has he proved what he alleged? Has he sustained himself in his attack on the government, and on the history of the North, in the matter of the public lands? Has he disproved a fact, refuted a proposition, weakened an argument, maintained by me? Has he come within beat of drum of any position of mine? O, no; but he has "carried the war into the enemy's country"! Carried the war into the enemy's country! Yes, Sir, and what sort of a war has he made of it? Why, Sir, he has stretched a drag-net over the whole surface of perished pamphlets, indiscreet sermons, frothy paragraphs, and fuming popular addresses; over whatever the pulpit in its moments of alarm, the press in its heats, and parties in their extravagance, have severally thrown off in times of general excitement and violence. He has thus swept together a mass of such things as, but that they are now old and cold, the public health would have required him rather to leave in their state of dispersion

For a good long hour or two, we had the unbroken pleasure of listening to the honorable member, while he recited with his usual grace and spirit, and with evident high gusto, speeches, pamphlets, addresses, and all the *et cæteras* of the political press, such as warm heads produce in warm times; and such as it would be "discomfiture" indeed for any one, whose taste did not delight in that sort of reading, to be obliged to peruse. This is his war. This it is to carry war into the enemy's country. It is in an invasion of this sort, that he flatters himself with the expectation of gaining laurels fit to adorn a Senator's brow!

Mr. President, I shall not, it will not, I trust, be expected that I should, either now or at any time, separate this farrago into parts, and answer and examine its components. I shall barely bestow upon it all a general remark or two. In the run of forty years, Sir, under this Constitution, we have experienced sundry successive violent party contests. Party arose, indeed, with the Constitution itself, and, in some form or other, has attended it through the greater part of its history. Whether any other constitution than the old Articles of Confederation was desirable, was itself a question on which parties divided; if a new constitution were framed, what powers should be given to it was another question; and when it had been formed, what was, in fact, the just extent of the powers actually conferred was a third. Parties, as we know, existed under the first administration, as distinctly marked as those which have manifested themselves at any subsequent period. The contest immediately preceding the political change in 1801, and that, again, which existed at the commencement of the late war, are other instances of party excitement, of something more than usual strength and intensity. In all these conflicts there was, no doubt, much of violence on both and all sides. It would be impossible, if one had a fancy for such employment, to adjust the relative *quantum* of violence between these contending parties. There was enough in each, as must always be expected in popular governments. With a great deal of popular and decorous discussion, there was mingled a great deal, also, of declamation, virulence, crimination, and abuse. In regard to any party, probably, at one of the leading epochs in the history of parties, enough may be found to make out another inflamed exhibition, not unlike that with which the honorable member

has edified us. For myself, Sir, I shall not rake among the rubbish of bygone times, to see what I can find, or whether I cannot find something by which I can fix a blot on the escutcheon of any State, any party, or any part of the country. General Washington's administration was steadily and zealously maintained, as we all know, by New England. It was violently opposed elsewhere. We know in what quarter he had the most earnest, constant, and persevering support, in all his great and leading measures. We know where his private and personal character was held in the highest degree of attachment and veneration; and we know, too, where his measures were opposed, his services slighted, and his character vilified. We know, or we might know, if we turned to the journals, who expressed respect, gratitude, and regret, when he retired from the chief magistracy, and who refused to express either respect, gratitude, or regret. I shall not open those journals. Publications more abusive or scurrilous never saw the light, than were sent forth against Washington, and all his leading measures, from presses south of New England. But I shall not look them up. I employ no scavengers, no one is in attendance on me, furnishing such means of retaliation; and if there were, with an ass's load of them, with a bulk as huge as that which the gentleman himself has produced, I would not touch one of them. I see enough of the violence of our own times, to be no way anxious to rescue from forgetfulness the extravagances of times past.

Besides, what is all this to the present purpose? It has nothing to do with the public lands, in regard to which the attack was begun; and it has nothing to do with those sentiments and opinions which, I have thought, tend to disunion, and all of which the honorable member seems to have adopted himself, and undertaken to defend. New England has, at times, so argues the gentleman, held opinions as dangerous as those which he now holds. Suppose this were so; why should *he* therefore abuse New England? If he finds himself countenanced by acts of hers, how is it that, while he relies on these acts, he covers, or seeks to cover, their authors with reproach? But, Sir, if, in the course of forty years, there have been undue effervescences of party in New England, has the same thing happened nowhere else? Party animosity and party outrage, not in New England, but elsewhere, denounced President Wash-

ington, not only as a Federalist, but as a Tory, a British agent, a man who in his high office sanctioned corruption. But does the honorable member suppose, if I had a tender here who should put such an effusion of wickedness and folly into my hand, that I would stand up and read it against the South? Parties ran into great heats again in 1799 and 1800. What was said, Sir, or rather what was not said, in those years, against John Adams, one of the committee that drafted the Declaration of Independence, and its admitted ablest defender on the floor of Congress? If the gentleman wishes to increase his stores of party abuse and frothy violence, if he has a determined proclivity to such pursuits, there are treasures of that sort south of the Potomac, much to his taste, yet untouched. I shall not touch them.

The parties which divided the country at the commencement of the late war were violent. But then there was violence on both sides, and violence in every State. Minorities and majorities were equally violent. There was no more violence against the war in New England, than in other States; nor any more appearance of violence, except that, owing to a dense population, greater facility of assembling, and more presses, there may have been more in quantity spoken and printed there than in some other places. In the article of sermons, too, New England is somewhat more abundant than South Carolina; and for that reason the chance of finding here and there an exceptionable one may be greater. I hope, too, there are more good ones. Opposition may have been more formidable in New England, as it embraced a larger portion of the whole population; but it was no more unrestrained in principle, or violent in manner. The minorities dealt quite as harshly with their own State governments as the majorities dealt with the administration here. There were presses on both sides, popular meetings on both sides, ay, and pulpits on both sides also. The gentleman's purveyors have only catered for him among the productions of one side. I certainly shall not supply the deficiency by furnishing samples of the other. I leave to him, and to them, the whole concern.

It is enough for me to say, that if, in any part of this their grateful occupation, if, in all their researches, they find any thing in the history of Massachusetts, or New England, or in

the proceedings of any legislative or other public body, disloyal to the Union, speaking slightingly of its value, proposing to break it up, or recommending non-intercourse with neighboring States, on account of difference of political opinion, then, Sir, I give them all up to the honorable gentleman's unrestrained rebuke; expecting, however, that he will extend his buffetings in like manner *to all similar proceedings, wherever else found.*

The gentleman, Sir, has spoken at large of former parties, now no longer in being, by their received appellations, and has undertaken to instruct us, not only in the knowledge of their principles, but of their respective pedigrees also. He has ascended to their origin, and run out their genealogies. With most exemplary modesty, he speaks of the party to which he professes to have himself belonged, as the true Pure, the only honest, patriotic party, derived by regular descent, from father to son, from the time of the virtuous Romans! Spreading before us the *family tree* of political parties, he takes especial care to show himself snugly perched on a popular bough! He is wakeful to the expediency of adopting such rules of descent as shall bring him in, to the exclusion of others, as an heir to the inheritance of all public virtue and all true political principle. His party and his opinions are sure to be orthodox; heterodoxy is confined to his opponents. He spoke, Sir, of the Federalists, and I thought I saw some eyes begin to open and stare a little, when he ventured on that ground. I expected he would draw his sketches rather lightly, when he looked on the circle round him, and especially if he should cast his thoughts to the high places out of the Senate. Nevertheless, he went back to Rome, *ad annum urbis conditæ*, and found the fathers of the Federalists in the primeval aristocrats of that renowned city! He traced the flow of Federal blood down through successive ages and centuries, till he brought it into the veins of the American Tories, of whom, by the way, there were twenty in the Carolinas for one in Massachusetts. From the Tories he followed it to the Federalists; and, as the Federal party was broken up, and there was no possibility of transmitting it further on this side the Atlantic, he seems to have discovered that it has gone off collaterally, though against all the canons of descent, into the Ultras of France, and finally become extinguished, like exploded gas, among the adherents of Don Miguel! This, Sir, is an abstract of the gentleman's his-

tory of Federalism. I am not about to controvert it. It is not, at present, worth the pains of refutation; because, Sir, if at this day any one feels the sin of Federalism lying heavily on his conscience, he can easily procure remission. He may even obtain an indulgence, if he be desirous of repeating the same transgression. It is an affair of no difficulty to get into this same right line of patriotic descent. A man now-a-days is at liberty to choose his political parentage. He may elect his own father. Federalist or not, he may, if he choose, claim to belong to the favored stock, and his claim will be allowed. He may carry back his pretensions just as far as the honorable gentleman himself; nay, he may make himself out the honorable gentleman's cousin, and prove, satisfactorily, that he is descended from the same political great-grandfather. All this is allowable. We all know a process, Sir, by which the whole Essex Junto could, in one hour, be all washed white from their ancient Federalism, and come out, every one of them, original Democrats, dyed in the wool! Some of them have actually undergone the operation, and they say it is quite easy. The only inconvenience it occasions, as they tell us, is a slight tendency of the blood to the face, a soft suffusion, which, however, is very transient, since nothing is said by those whom they join calculated to deepen the red on the cheek, but a prudent silence is observed in regard to all the past. Indeed, Sir, some smiles of approbation have been bestowed, and some crumbs of comfort have fallen, not a thousand miles from the door of the Hartford Convention itself. And if the author of the Ordinance of 1787 possessed the other requisite qualifications, there is no knowing, notwithstanding his Federalism, to what heights of favor he might not yet attain.

Mr. President, in carrying his warfare, such as it is, into New England, the honorable gentleman all along professes to be acting on the defensive. He chooses to consider me as having assailed South Carolina, and insists that he comes forth only as her champion, and in her defence. Sir, I do not admit that I made any attack whatever on South Carolina. Nothing like it. The honorable member, in his first speech, expressed opinions, in regard to revenue and some other topics, which I heard both with pain and with surprise. I told the gentleman I was aware that such sentiments were entertained *out* of the government, but had

not expected to find them advanced in it; that I knew there were persons in the South who speak of our Union with indifference or doubt, taking pains to magnify its evils, and to say nothing of its benefits; that the honorable member himself, I was sure, could never be one of these; and I regretted the expression of such opinions as he had avowed, because I thought their obvious tendency was to encourage feelings of disrespect to the Union, and to impair its strength. This, Sir, is the sum and substance of all I said on the subject. And this constitutes the attack which called on the chivalry of the gentleman, in his own opinion, to harry us with such a foray among the party pamphlets and party proceedings of Massachusetts! If he means that I spoke with dissatisfaction or disrespect of the ebullitions of individuals in South Carolina, it is true. But if he means that I assailed the character of the State, her honor, or patriotism, that I reflected on her history or her conduct, he has not the slightest ground for any such assumption. I did not even refer, I think, in my observations, to any collection of individuals. I said nothing of the recent conventions. I spoke in the most guarded and careful manner, and only expressed my regret for the publication of opinions, which I presumed the honorable member disapproved as much as myself. In this, it seems, I was mistaken. I do not remember that the gentleman has disclaimed any sentiment, or any opinion, of a supposed anti-union tendency, which on all or any of the recent occasions has been expressed. The whole drift of his speech has been rather to prove, that, in divers times and manners, sentiments equally liable to my objection have been avowed in New England. And one would suppose that his object, in this reference to Massachusetts, was to find a precedent to justify proceedings in the South, were it not for the reproach and contumely with which he labors, all along, to load these his own chosen precedents. By way of defending South Carolina from what he chooses to think an attack on her, he first quotes the example of Massachusetts, and then denounces that example in good set terms. This twofold purpose, not very consistent, one would think, with itself, was exhibited more than once in the course of his speech. He referred, for instance, to the Hartford Convention. Did he do this for authority, or for a topic of reproach? Apparently for both, for he told us that he should find no fault with the mere

fact of holding such a convention, and considering and discussing such questions as he supposes were then and there discussed; but what rendered it obnoxious was its being held at the time, and under the circumstances of the country then existing. We were in a war, he said, and the country needed all our aid; the hand of government required to be strengthened, not weakened; and patriotism should have postponed such proceedings to another day. The thing itself, then, is a precedent; the time and manner of it only, a subject of censure.

Now, Sir, I go much further, on this point, than the honorable member. Supposing, as the gentleman seems to do, that the Hartford Convention assembled for any such purpose as breaking up the Union, because they thought unconstitutional laws had been passed, or to consult on that subject, or *to calculate the value of the Union;* supposing this to be their purpose, or any part of it, then I say the meeting itself was disloyal, and was obnoxious to censure, whether held in time of peace or time of war, or under whatever circumstances. The material question is the *object.* Is dissolution the *object?* If it be, external circumstances may make it a more or less aggravated case, but cannot affect the principle. I do not hold, therefore, Sir, that the Hartford Convention was pardonable, even to the extent of the gentleman's admission, if its objects were really such as have been imputed to it. Sir, there never was a time, under any degree of excitement, in which the Hartford Convention, or any other convention, could have maintained itself one moment in New England, if assembled for any such purpose as the gentleman says would have been an allowable purpose. To hold conventions to decide constitutional law! To try the binding validity of statutes by votes in a convention! Sir, the Hartford Convention, I presume, would not desire that the honorable gentleman should be their defender or advocate, if he puts their case upon such untenable and extravagant grounds.

Then, Sir, the gentleman has no fault to find with these recently promulgated South Carolina opinions. And certainly he need have none; for his own sentiments, as now advanced, and advanced on reflection, as far as I have been able to comprehend them, go the full length of all these opinions. I propose, Sir, to say something on these, and to consider how far they are just and constitutional. Before doing that, however, let me ob-

serve that the eulogium pronounced by the honorable gentleman on the character of the State of South Carolina, for her Revolutionary and other merits, meets my hearty concurrence. I shall not acknowledge that the honorable member goes before me in regard for whatever of distinguished talent, or distinguished character, South Carolina has produced. I claim part of the honor, I partake in the pride, of her great names. I claim them for countrymen, one and all, the Laurenses, the Rutledges, the Pinckneys, the Sumpters, the Marions, Americans all, whose fame is no more to be hemmed in by State lines, than their talents and patriotism were capable of being circumscribed within the same narrow limits. In their day and generation, they served and honored the country, and the whole country; and their renown is of the treasures of the whole country. Him whose honored name the gentleman himself bears, — does he esteem me less capable of gratitude for his patriotism, or sympathy for his sufferings, than if his eyes had first opened upon the light of Massachusetts, instead of South Carolina? Sir, does he suppose it in his power to exhibit a Carolina name so bright, as to produce envy in my bosom? No, Sir, increased gratification and delight, rather. I thank God, that, if I am gifted with little of the spirit which is able to raise mortals to the skies, I have yet none, as I trust, of that other spirit, which would drag angels down. When I shall be found, Sir, in my place here in the Senate, or elsewhere, to sneer at public merit, because it happens to spring up beyond the little limits of my own State or neighborhood; when I refuse, for any such cause, or for any cause, the homage due to American talent, to elevated patriotism, to sincere devotion to liberty and the country; or, if I see an uncommon endowment of Heaven, if I see extraordinary capacity and virtue, in any son of the South, and if, moved by local prejudice or gangrened by State jealousy, I get up here to abate the tithe of a hair from his just character and just fame, may my tongue cleave to the roof of my mouth!

Sir, let me recur to pleasing recollections; let me indulge in refreshing remembrance of the past; let me remind you that, in early times, no States cherished greater harmony, both of principle and feeling, than Massachusetts and South Carolina. Would to God that harmony might again return! Shoulder to shoulder they went through the Revolution, hand in hand they stood

round the administration of Washington, and felt his own great arm lean on them for support. Unkind feeling, if it exist, alienation, and distrust are the growth, unnatural to such soils, of false principles since sown. They are weeds, the seeds of which that same great arm never scattered.

Mr. President, I shall enter on no encomium upon Massachusetts; she needs none. There she is. Behold her, and judge for yourselves. There is her history; the world knows it by heart. The past, at least, is secure. There is Boston, and Concord, and Lexington, and Bunker Hill; and there they will remain for ever. The bones of her sons, falling in the great struggle for Independence, now lie mingled with the soil of every State from New England to Georgia; and there they will lie for ever. And Sir, where American Liberty raised its first voice, and where its youth was nurtured and sustained, there it still lives, in the strength of its manhood and full of its original spirit. If discord and disunion shall wound it, if party strife and blind ambition shall hawk at and tear it, if folly and madness, if uneasiness under salutary and necessary restraint, shall succeed in separating it from that Union, by which alone its existence is made sure, it will stand, in the end, by the side of that cradle in which its infancy was rocked; it will stretch forth its arm with whatever of vigor it may still retain over the friends who gather round it; and it will fall at last, if fall it must, amidst the proudest monuments of its own glory, and on the very spot of its origin.

There yet remains to be performed, Mr. President, by far the most grave and important duty, which I feel to be devolved on me by this occasion. It is to state, and to defend, what I conceive to be the true principles of the Constitution under which we are here assembled. I might well have desired that so weighty a task should have fallen into other and abler hands. I could have wished that it should have been executed by those whose character and experience give weight and influence to their opinions, such as cannot possibly belong to mine. But, Sir, I have met the occasion, not sought it; and I shall proceed to state my own sentiments, without challenging for them any particular regard, with studied plainness, and as much precision as possible.

I understand the honorable gentleman from South Carolina to maintain, that it is a right of the State legislatures to interfere, whenever, in their judgment, this government transcends its constitutional limits, and to arrest the operation of its laws.

I understand him to maintain this right, as a right existing *under* the Constitution, not as a right to overthrow it on the ground of extreme necessity, such as would justify violent revolution.

I understand him to maintain an authority, on the part of the States, thus to interfere, for the purpose of correcting the exercise of power by the general government, of checking it, and of compelling it to conform to their opinion of the extent of its powers.

I understand him to maintain, that the ultimate power of judging of the constitutional extent of its own authority is not lodged exclusively in the general government, or any branch of it; but that, on the contrary, the States may lawfully decide for themselves, and each State for itself, whether, in a given case, the act of the general government transcends its power.

I understand him to insist, that, if the exigency of the case, in the opinion of any State government, require it, such State government may, by its own sovereign authority, annul an act of the general government which it deems plainly and palpably unconstitutional.

This is the sum of what I understand from him to be the South Carolina doctrine, and the doctrine which he maintains. I propose to consider it, and compare it with the Constitution. Allow me to say, as a preliminary remark, that I call this the South Carolina doctrine only because the gentleman himself has so denominated it. I do not feel at liberty to say that South Carolina, as a State, has ever advanced these sentiments. I hope she has not, and never may. That a great majority of her people are opposed to the tariff laws, is doubtless true. That a majority, somewhat less than that just mentioned, conscientiously believe these laws unconstitutional, may probably also be true. But that any majority holds to the right of direct State interference at State discretion, the right of nullifying acts of Congress by acts of State legislation, is more than I know, and what I shall be slow to believe.

That there are individuals besides the honorable gentleman

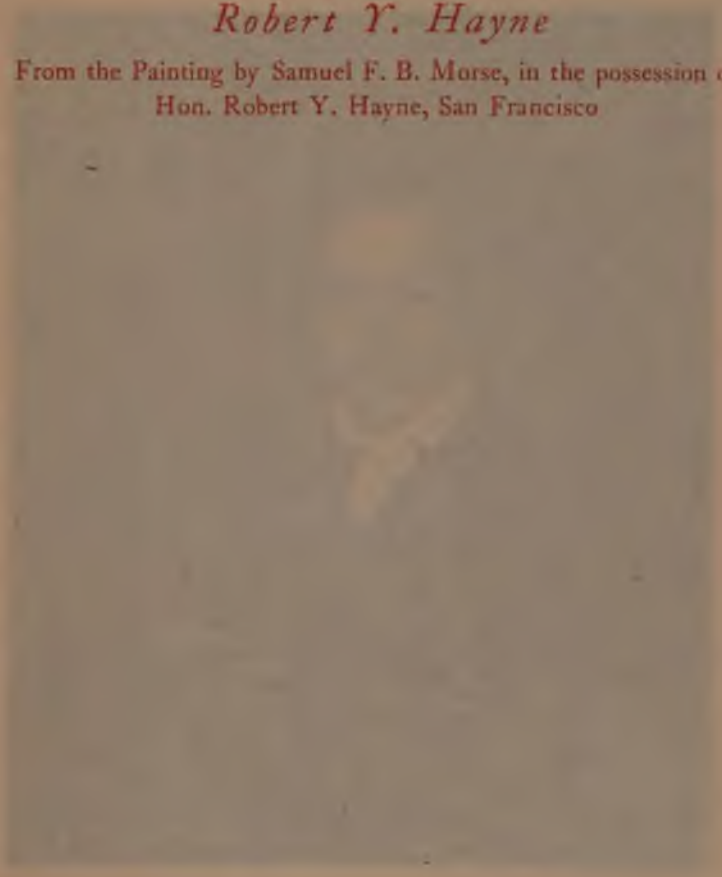
who do maintain these opinions, is quite certain. I recollect the recent expression of a sentiment, which circumstances attending its utterance and publication justify us in supposing was not unpremeditated. "The sovereignty of the State, — never to be controlled, construed, or decided on, but by her own feelings of honorable justice."

Mr. Hayne here rose and said, that, for the purpose of being clearly understood, he would state that his proposition was in the words of the Virginia resolution, as follows: —

"That this assembly doth explicitly and peremptorily declare, that it views the powers of the federal government, as resulting from the compact to which the States are parties, as limited by the plain sense and intention of the instrument constituting that compact, as no farther valid than they are authorized by the grants enumerated in that compact; and that, in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the States who are parties thereto have the right, and are in duty bound, to interpose, for arresting the progress of the evil, and for maintaining within their respective limits the authorities, rights, and liberties appertaining to them."

Mr. Webster resumed: —

I am quite aware, Mr. President, of the existence of the resolution which the gentleman read, and has now repeated, and that he relies on it as his authority. I know the source, too, from which it is understood to have proceeded. I need not say that I have much respect for the constitutional opinions of Mr. Madison; they would weigh greatly with me always. But before the authority of his opinion be vouched for the gentleman's proposition, it will be proper to consider what is the fair interpretation of that resolution, to which Mr. Madison is understood to have given his sanction. As the gentleman construes it, it is an authority for him. Possibly, he may not have adopted the right construction. That resolution declares, that, *in the case of the dangerous exercise of powers not granted by the general government, the States may interpose to arrest the progress of the evil.* But how interpose, and what does this declaration purport? Does it mean no more than that there may be extreme cases, in which the people, in any mode of assembling, may resist usurpation, and relieve themselves from a tyrannical government? No one will deny this. Such resistance is not only



Robert Y. Hayne

From the Painting by Samuel F. B. Morse, in the possession of
Hon. Robert Y. Hayne, San Francisco

A.W. Elson & Co. Boston.

acknowledged to be just in America, but in England also. Blackstone admits as much, in the theory, and practice, too, of the English constitution. We, Sir, who oppose the Carolina doctrine, do not deny that the people may, if they choose, throw off any government when it becomes oppressive and intolerable, and erect a better in its stead. We all know that civil institutions are established for the public benefit, and that when they cease to answer the ends of their existence they may be changed. But I do not understand the doctrine now contended for to be that, which, for the sake of distinction, we may call the right of revolution. I understand the gentleman to maintain, that, without revolution, without civil commotion, without rebellion, a remedy for supposed abuse and transgression of the powers of the general government lies in a direct appeal to the interference of the State governments.

Mr. Hayne here rose and said: He did not contend for the mere right of revolution, but for the right of constitutional resistance. What he maintained was, that in case of a plain, palpable violation of the Constitution by the general government, a State may interpose; and that this interposition is constitutional.

Mr. Webster resumed: —

So, Sir, I understood the gentleman, and am happy to find that I did not misunderstand him. What he contends for is, that it is constitutional to interrupt the administration of the Constitution itself, in the hands of those who are chosen and sworn to administer it, by the direct interference, in form of law, of the States, in virtue of their sovereign capacity. The inherent right in the people to reform their government I do not deny; and they have another right, and that is, to resist unconstitutional laws, without overturning the government. It is no doctrine of mine that unconstitutional laws bind the people. The great question is, Whose prerogative is it to decide on the constitutionality or unconstitutionality of the laws? On that, the main debate hinges. The proposition, that, in case of a supposed violation of the Constitution by Congress, the States have a constitutional right to interfere and annul the law of Congress, is the proposition of the gentleman. I do not admit it. If the gentleman had intended no more than to assert the right of revolution for justifiable cause, he would have said only what all agree to. But I cannot conceive that there can be a

middle course, between submission to the laws, when regularly pronounced constitutional, on the one hand, and open resistance, which is revolution or rebellion, on the other. I say, the right of a State to annul a law of Congress cannot be maintained, but on the ground of the inalienable right of man to resist oppression; that is to say, upon the ground of revolution. I admit that there is an ultimate violent remedy, above the Constitution and in defiance of the Constitution, which may be resorted to when a revolution is to be justified. But I do not admit, that, under the Constitution and in conformity with it, there is any mode in which a State government, as a member of the Union, can interfere and stop the progress of the general government, by force of her own laws, under any circumstances whatever.

This leads us to inquire into the origin of this government and the source of its power. Whose agent is it? Is it the creature of the State legislatures, or the creature of the people? If the government of the United States be the agent of the State governments, then they may control it, provided they can agree in the manner of controlling it; if it be the agent of the people, then the people alone can control it, restrain it, modify, or reform it. It is observable enough, that the doctrine for which the honorable gentleman contends leads him to the necessity of maintaining, not only that this general government is the creature of the States, but that it is the creature of each of the States severally, so that each may assert the power for itself of determining whether it acts within the limits of its authority. It is the servant of four-and-twenty masters, of different wills and different purposes, and yet bound to obey all. This absurdity (for it seems no less) arises from a misconception as to the origin of this government and its true character. It is, Sir, the people's Constitution, the people's government, made for the people, made by the people, and answerable to the people. The people of the United States have declared that this Constitution shall be the supreme law. We must either admit the proposition, or dispute their authority. The States are, unquestionably, sovereign, so far as their sovereignty is not affected by this supreme law. But the State legislatures, as political bodies, however sovereign, are yet not sovereign over the people. So far as the people have given power to the general government, so far the grant is unquestionably good, and the government

holds of the people, and not of the State governments We are all agents of the same supreme power, the people. The general government and the State governments derive their authority from the same source. Neither can, in relation to the other, be called primary, though one is definite and restricted, and the other general and residuary. The national government possesses those powers which it can be shown the people have conferred on it, and no more. All the rest belongs to the State governments, or to the people themselves. So far as the people have restrained State sovereignty, by the expression of their will, in the Constitution of the United States, so far, it must be admitted, State sovereignty is effectually controlled. I do not contend that it is, or ought to be, controlled farther. The sentiment to which I have referred propounds that State sovereignty is only to be controlled by its own "feeling of justice"; that is to say, it is not to be controlled at all, for one who is to follow his own feelings is under no legal control. Now, however men may think this ought to be, the fact is, that the people of the United States have chosen to impose control on State sovereignties. There are those, doubtless, who wish they had been left without restraint; but the Constitution has ordered the matter differently. To make war, for instance, is an exercise of sovereignty; but the Constitution declares that no State shall make war To coin money is another exercise of sovereign power; but no State is at liberty to coin money. Again, the Constitution says that no sovereign State shall be so sovereign as to make a treaty. These prohibitions, it must be confessed, are a control on the State sovereignty of South Carolina, as well as of the other States, which does not arise "from her own feelings of honorable justice." The opinion referred to, therefore, is in defiance of the plainest provisions of the Constitution.

There are other proceedings of public bodies which have already been alluded to, and to which I refer again, for the purpose of ascertaining more fully what is the length and breadth of that doctrine, denominated the Carolina doctrine, which the honorable member has now stood up on this floor to maintain. In one of them I find it resolved, that "the tariff of 1828, and every other tariff designed to promote one branch of industry at the expense of others, is contrary to the meaning and intention of the federal compact; and such a dangerous, palpable, and

deliberate usurpation of power, by a determined majority, wielding the general government beyond the limits of its delegated powers, as calls upon the States which compose the suffering minority, in their sovereign capacity, to exercise the powers which, as sovereigns, necessarily devolve upon them, when their compact is violated."

Observe, Sir, that this resolution holds the tariff of 1828, and every other tariff designed to promote one branch of industry at the expense of another, to be such a dangerous, palpable, and deliberate usurpation of power, as calls upon the States, in their sovereign capacity, to interfere by their own authority. This denunciation, Mr. President, you will please to observe, includes our old tariff of 1816, as well as all others; because that was established to promote the interest of the manufacturers of cotton, to the manifest and admitted injury of the Calcutta cotton trade. Observe, again, that all the qualifications are here rehearsed and charged upon the tariff, which are necessary to bring the case within the gentleman's proposition. The tariff is a usurpation; it is a dangerous usurpation; it is a palpable usurpation; it is a deliberate usurpation. It is such a usurpation, therefore, as calls upon the States to exercise their right of interference. Here is a case, then, within the gentleman's principles, and all his qualifications of his principles. It is a case for action. The Constitution is plainly, dangerously, palpably, and deliberately violated; and the States must interpose their own authority to arrest the law. Let us suppose the State of South Carolina to express this same opinion, by the voice of her legislature. That would be very imposing; but what then? Is the voice of one State conclusive? It so happens that, at the very moment when South Carolina resolves that the tariff laws are unconstitutional, Pennsylvania and Kentucky resolve exactly the reverse. *They* hold those laws to be both highly proper and strictly constitutional. And now, Sir, how does the honorable member propose to deal with this case? How does he relieve us from this difficulty, upon any principle of his? His construction gets us into it; how does he propose to get us out?

In Carolina, the tariff is a palpable, deliberate usurpation; Carolina, therefore, may nullify it, and refuse to pay the duties. In Pennsylvania, it is both clearly constitutional and highly ex-

pedient; and there the duties are to be paid. And yet we live under a government of uniform laws, and under a Constitution too, which contains an express provision, as it happens, that all duties shall be equal in all the States. Does not this approach absurdity?

If there be no power to settle such questions, independent of either of the States, is not the whole Union a rope of sand? Are we not thrown back again, precisely, upon the old Confederation?

It is too plain to be argued. Four-and-twenty interpreters of constitutional law, each with a power to decide for itself, and none with authority to bind any body else, and this constitutional law the only bond of their union! What is such a state of things but a mere connection during pleasure, or, to use the phraseology of the times, *during feeling?* And that feeling, too, not the feeling of the people, who established the Constitution, but the feeling of the State governments.

In another of the South Carolina addresses, having premised that the crisis requires "all the concentrated energy of passion," an attitude of open resistance to the laws of the Union is advised. Open resistance to the laws, then, is the constitutional remedy, the conservative power of the State, which the South Carolina doctrines teach for the redress of political evils, real or imaginary. And its authors further say, that, appealing with confidence to the Constitution itself, to justify their opinions, they cannot consent to try their accuracy by the courts of justice. In one sense, indeed, Sir, this is assuming an attitude of open resistance in favor of liberty. But what sort of liberty? The liberty of establishing their own opinions, in defiance of the opinions of all others; the liberty of judging and of deciding exclusively themselves, in a matter in which others have as much right to judge and decide as they; the liberty of placing their own opinions above the judgment of all others, above the laws, and above the Constitution. This is their liberty, and this is the fair result of the proposition contended for by the honorable gentleman. Or, it may be more properly said, it is identical with it, rather than a result from it.

In the same publication we find the following:—"Previously to our Revolution, when the arm of oppression was stretched over New England, where did our Northern brethren meet with

a braver sympathy than that which sprung from the bosoms of Carolinians? We had no extortion, no oppression, no collision with the king's ministers, no navigation interests springing up, in envious rivalry of England."

This seems extraordinary language. South Carolina no collision with the king's ministers in 1775! No extortion! No oppression! But, Sir, it is also most significant language. Does any man doubt the purpose for which it was penned? Can any one fail to see that it was designed to raise in the reader's mind the question, whether, *at this time*, — that is to say, in 1828, — South Carolina has any collision with the king's ministers, any oppression, or extortion, to fear from England? whether, in short, England is not as naturally the friend of South Carolina as New England, with her navigation interests springing up in envious rivalry of England?

Is it not strange, Sir, that an intelligent man in South Carolina, in 1828, should thus labor to prove that, in 1775, there was no hostility, no cause of war, between South Carolina and England? That she had no occasion, in reference to her own interest, or from a regard to her own welfare, to take up arms in the Revolutionary contest? Can any one account for the expression of such strange sentiments, and their circulation through the State, otherwise than by supposing the object to be what I have already intimated, to raise the question, if they had no "*collision*" (mark the expression) with the ministers of King George the Third, in 1775, what *collision* have they, in 1828, with the ministers of King George the Fourth? What is there now in the existing state of things, to separate Carolina from *Old*, more, or rather, than from *New* England?

Resolutions, Sir, have been recently passed by the legislature of South Carolina. I need not refer to them; they go no farther than the honorable gentleman himself has gone, and I hope not so far. I content myself, therefore, with debating the matter with him.

And now, Sir, what I have first to say on this subject is, that at no time, and under no circumstances, has New England, or any State in New England, or any respectable body of persons in New England, or any public man of standing in New England, put forth such a doctrine as this Carolina doctrine.

The gentleman has found no case, he can find none, to support his own opinions by New England authority. New England has studied the Constitution in other schools, and under other teachers. She looks upon it with other regards, and deems more highly and reverently both of its just authority and its utility and excellence. The history of her legislative proceedings may be traced. The ephemeral effusions of temporary bodies, called together by the excitement of the occasion, may be hunted up; they have been hunted up. The opinions and votes of her public men, in and out of Congress, may be explored. It will all be in vain. The Carolina doctrine can derive from her neither countenance nor support. She rejects it now; she always did reject it; and till she loses her senses, she always will reject it. The honorable member has referred to expressions on the subject of the embargo law, made in this place, by an honorable and venerable gentleman,* now favoring us with his presence. He quotes that distinguished Senator as saying, that, in his judgment, the embargo law was unconstitutional, and that therefore, in his opinion, the people were not bound to obey it. That, Sir, is perfectly constitutional language. An unconstitutional law is not binding; *but then it does not rest with a resolution or a law of a State legislature to decide whether an act of Congress be or be not constitutional.* An unconstitutional act of Congress would not bind the people of this District, although they have no legislature to interfere in their behalf; and, on the other hand, a constitutional law of Congress does bind the citizens of every State, although all their legislatures should undertake to annul it by act or resolution. The venerable Connecticut Senator is a constitutional lawyer, of sound principles and enlarged knowledge; a statesman practised and experienced, bred in the company of Washington, and holding just views upon the nature of our governments. He believed the embargo unconstitutional, and so did others; but what then? Who did he suppose was to decide that question? The State legislatures? Certainly not. No such sentiment ever escaped his lips.

Let us follow up, Sir, this New England opposition to the embargo laws; let us trace it, till we discern the principle which

* Mr. Hillhouse, of Connecticut.

controlled and governed New England throughout the whole course of that opposition. We shall then see what similarity there is between the New England school of constitutional opinions, and this modern Carolina school. The gentleman, I think, read a petition from some single individual addressed to the legislature of Massachusetts, asserting the Carolina doctrine; that is, the right of State interference to arrest the laws of the Union. The fate of that petition shows the sentiment of the legislature. It met no favor. The opinions of Massachusetts were very different. They had been expressed in 1798, in answer to the resolutions of Virginia, and she did not depart from them, nor bend them to the times. Misgoverned, wronged, oppressed, as she felt herself to be, she still held fast her integrity to the Union. The gentleman may find in her proceedings much evidence of dissatisfaction with the measures of government, and great and deep dislike to the embargo; all this makes the case so much the stronger for her; for, notwithstanding all this dissatisfaction and dislike, she still claimed no right to sever the bonds of the Union. There was heat, and there was anger in her political feeling. Be it so; but neither her heat nor her anger betrayed her into infidelity to the government. The gentleman labors to prove that she disliked the embargo as much as South Carolina dislikes the tariff, and expressed her dislike as strongly. Be it so; but did she propose the Carolina remedy? did she threaten to interfere, by State authority, to annul the laws of the Union? That is the question for the gentleman's consideration.

No doubt, Sir, a great majority of the people of New England conscientiously believed the embargo law of 1807 unconstitutional; as conscientiously, certainly, as the people of South Carolina hold that opinion of the tariff. They reasoned thus: Congress has power to regulate commerce; but here is a law, they said, stopping all commerce, and stopping it indefinitely. The law is perpetual; that is, it is not limited in point of time, and must of course continue until it shall be repealed by some other law. It is as perpetual, therefore, as the law against treason or murder. Now, is this regulating commerce, or destroying it? Is it guiding, controlling, giving the rule to commerce, as a subsisting thing, or is it putting an end to it altogether? Nothing is more certain, than that a majority in New England deemed

this law a violation of the Constitution. The very case required by the gentleman to justify State interference had then arisen. Massachusetts believed this law to be "a deliberate, palpable, and dangerous exercise of a power not granted by the Constitution." Deliberate it was, for it was long continued; palpable she thought it, as no words in the Constitution gave the power, and only a construction, in her opinion most violent, raised it; dangerous it was, since it threatened utter ruin to her most important interests. Here, then, was a Carolina case. How did Massachusetts deal with it? It was, as she thought, a plain, manifest, palpable violation of the Constitution, and it brought ruin to her doors. Thousands of families, and hundreds of thousands of individuals, were beggared by it. While she saw and felt all this, she saw and felt also, that, as a measure of national policy, it was perfectly futile; that the country was no way benefited by that which caused so much individual distress; that it was efficient only for the production of evil, and all that evil inflicted on ourselves. In such a case, under such circumstances, how did Massachusetts demean herself? Sir, she remonstrated, she memorialized, she addressed herself to the general government, not exactly "with the concentrated energy of passion," but with her own strong sense, and the energy of sober conviction. But she did not interpose the arm of her own power to arrest the law, and break the embargo. Far from it. Her principles bound her to two things; and she followed her principles, lead where they might. First, to submit to every constitutional law of Congress, and secondly, if the constitutional validity of the law be doubted, to refer that question to the decision of the proper tribunals. The first principle is vain and ineffectual without the second. A majority of us in New England believed the embargo law unconstitutional; but the great question was, and always will be in such cases, Who is to decide this? Who is to judge between the people and the government? And, Sir, it is quite plain, that the Constitution of the United States confers on the government itself, to be exercised by its appropriate department, and under its own responsibility to the people, this power of deciding ultimately and conclusively upon the just extent of its own authority. If this had not been done, we should not have advanced a single step beyond the old Confederation.

Being fully of opinion that the embargo law was unconstitutional, the people of New England were yet equally clear in the opinion, (it was a matter they did doubt upon,) that the question, after all, must be decided by the judicial tribunals of the United States. Before those tribunals, therefore, they brought the question. Under the provisions of the law, they had given bonds to millions in amount, and which were alleged to be forfeited. They suffered the bonds to be sued, and thus raised the question. In the old-fashioned way of settling disputes, they went to law. The case came to hearing, and solemn argument; and he who espoused their cause, and stood up for them against the validity of the embargo act, was none other than that great man, of whom the gentleman has made honorable mention, Samuel Dexter. He was then, Sir, in the fulness of his knowledge, and the maturity of his strength. He had retired from long and distinguished public service here, to the renewed pursuit of professional duties, carrying with him all that enlargement and expansion, all the new strength and force, which an acquaintance with the more general subjects discussed in the national councils is capable of adding to professional attainment, in a mind of true greatness and comprehension. He was a lawyer, and he was also a statesman. He had studied the Constitution, when he filled public station, that he might defend it; he had examined its principles that he might maintain them. More than all men, or at least as much as any man, he was attached to the general government and to the union of the States. His feelings and opinions all ran in that direction. A question of constitutional law, too, was, of all subjects, that one which was best suited to his talents and learning. Aloof from technicality, and unfettered by artificial rule, such a question gave opportunity for that deep and clear analysis, that mighty grasp of principle, which so much distinguished his higher efforts. His very statement was argument; his inference seemed demonstration. The earnestness of his own conviction wrought conviction in others. One was convinced, and believed, and assented, because it was gratifying, delightful, to think, and feel, and believe, in unison with an intellect of such evident superiority.

Mr. Dexter, Sir, such as I have described him, argued the New England cause. He put into his effort his whole heart, as well as all the powers of his understanding; for he had avowed,

in the most public manner, his entire concurrence with his neighbors on the point in dispute. He argued the cause; it was lost, and New England submitted. The established tribunals pronounced the law constitutional, and New England acquiesced. Now, Sir, is not this the exact opposite of the doctrine of the gentleman from South Carolina? According to him, instead of referring to the judicial tribunals, we should have broken up the embargo by laws of our own; we should have repealed it, *quoad* New England; for we had a strong, palpable, and oppressive case. Sir, we believed the embargo unconstitutional; but still that was matter of opinion, and who was to decide it? We thought it a clear case; but, nevertheless, we did not take the law into our own hands, because we did not wish to bring about a revolution, nor to break up the Union; for I maintain, that between submission to the decision of the constituted tribunals, and revolution, or disunion, there is no middle ground; there is no ambiguous condition, half allegiance and half rebellion. And, Sir, how futile, how very futile it is, to admit the right of State interference, and then attempt to save it from the character of unlawful resistance, by adding terms of qualification to the causes and occasions, leaving all these qualifications, like the case itself, in the discretion of the State governments. It must be a clear case, it is said, a deliberate case, a palpable case, a dangerous case. But then the State is still left at liberty to decide for herself what is clear, what is deliberate, what is palpable, what is dangerous. Do adjectives and epithets avail any thing?

Sir, the human mind is so constituted, that the merits of both sides of a controversy appear very clear, and very palpable, to those who respectively espouse them; and both sides usually grow clearer as the controversy advances. South Carolina sees unconstitutionality in the tariff; she sees oppression there also, and she sees danger. Pennsylvania, with a vision not less sharp, looks at the same tariff, and sees no such thing in it; she sees it all constitutional, all useful, all safe. The faith of South Carolina is strengthened by opposition, and she now not only sees, but *resolves*, that the tariff is palpably unconstitutional, oppressive, and dangerous; but Pennsylvania, not to be behind her neighbors, and equally willing to strengthen her own faith by a confident asseveration, *resolves*, also, and gives to every warm

affirmative of South Carolina, a plain, downright, Pennsylvania negative. South Carolina, to show the strength and unity of her opinion, brings her assembly to a unanimity, within seven voices; Pennsylvania, not to be outdone in this respect any more than in others, reduces her dissentient fraction to a single vote. Now, Sir, again, I ask the gentleman, What is to be done? Are these States both right? Is he bound to consider them both right? If not, which is in the wrong? or rather, which has the best right to decide? And if he, and if I, are not to know what the Constitution means, and what it is, till those two State legislatures, and the twenty-two others, shall agree in its construction, what have we sworn to, when we have sworn to maintain it? I was forcibly struck, Sir, with one reflection, as the gentleman went on in his speech. He quoted Mr. Madison's resolutions, to prove that a State may interfere, in a case of deliberate, palpable, and dangerous exercise of a power not granted. The honorable member supposes the tariff law to be such an exercise of power; and that consequently a case has arisen in which the State may, if it see fit, interfere by its own law. Now it so happens, nevertheless, that Mr. Madison deems this same tariff law quite constitutional. Instead of a clear and palpable violation, it is, in his judgment, no violation at all. So that, while they use his authority for a hypothetical case, they reject it in the very case before them. All this, Sir, shows the inherent futility, I had almost used a stronger word, of conceding this power of interference to the State, and then attempting to secure it from abuse by imposing qualifications of which the States themselves are to judge. One of two things is true; either the laws of the Union are beyond the discretion and beyond the control of the States; or else we have no constitution of general government, and are thrust back again to the days of the Confederation.

Let me here say, Sir, that if the gentleman's doctrine had been received and acted upon in New England, in the times of the embargo and non-intercourse, we should probably not now have been here. The government would very likely have gone to pieces, and crumbled into dust. No stronger case can ever arise than existed under those laws; no States can ever entertain a clearer conviction than the New England States then entertained; and if they had been under the influence of that heresy

of opinion, as I must call it, which the honorable member espouses, this Union would, in all probability, have been scattered to the four winds. I ask the gentleman, therefore, to apply his principles to that case; I ask him to come forth and declare, whether, in his opinion, the New England States would have been justified in interfering to break up the embargo system under the conscientious opinions which they held upon it? Had they a right to annul that law? Does he admit or deny? If what is thought palpably unconstitutional in South Carolina justifies that State in arresting the progress of the law, tell me whether that which was thought palpably unconstitutional also in Massachusetts would have justified her in doing the same thing. Sir, I deny the whole doctrine. It has not a foot of ground in the Constitution to stand on. No public man of reputation ever advanced it in Massachusetts in the warmest times, or could maintain himself upon it there at any time.

I wish now, Sir, to make a remark upon the Virginia resolutions of 1798. I cannot undertake to say how these resolutions were understood by those who passed them. Their language is not a little indefinite. In the case of the exercise by Congress of a dangerous power not granted to them, the resolutions assert the right, on the part of the State, to interfere and arrest the progress of the evil. This is susceptible of more than one interpretation. It may mean no more than that the States may interfere by complaint and remonstrance, or by proposing to the people an alteration of the Federal Constitution. This would all be quite unobjectionable. Or it may be that no more is meant than to assert the general right of revolution, as against all governments, in cases of intolerable oppression. This no one doubts, and this, in my opinion, is all that he who framed the resolutions could have meant by it; for I shall not readily believe that he was ever of opinion that a State, under the Constitution and in conformity with it, could, upon the ground of her own opinion of its unconstitutionality, however clear and palpable she might think the case, annul a law of Congress, so far as it should operate on herself, by her own legislative power.

I must now beg to ask, Sir, Whence is this supposed right of the States derived? Where do they find the power to interfere with the laws of the Union? Sir, the opinion which the honor-

able gentleman maintains is a notion founded in a total misapprehension, in my judgment, of the origin of this government, and of the foundation on which it stands. I hold it to be a popular government, erected by the people; those who administer it, responsible to the people; and itself capable of being amended and modified, just as the people may choose it should be. It is as popular, just as truly emanating from the people, as the State governments. It is created for one purpose; the State governments for another. It has its own powers; they have theirs. There is no more authority with them to arrest the operation of a law of Congress, than with Congress to arrest the operation of their laws. We are here to administer a Constitution emanating immediately from the people, and trusted by them to our administration. It is not the creature of the State governments. It is of no moment to the argument, that certain acts of the State legislatures are necessary to fill our seats in this body. That is not one of their original State powers, a part of the sovereignty of the State. It is a duty which the people, by the Constitution itself, have imposed on the State legislatures; and which they might have left to be performed elsewhere, if they had seen fit. So they have left the choice of President with electors; but all this does not affect the proposition that this whole government, President, Senate, and House of Representatives, is a popular government. It leaves it still all its popular character. The governor of a State (in some of the States) is chosen, not directly by the people, but by those who are chosen by the people, for the purpose of performing, among other duties, that of electing a governor. Is the government of the State, on that account, not a popular government? This government, Sir, is the independent offspring of the popular will. It is not the creature of State legislatures; nay, more, if the whole truth must be told, the people brought it into existence, established it, and have hitherto supported it, for the very purpose, amongst others, of imposing certain salutary restraints on State sovereignties. The States cannot now make war; they cannot contract alliances; they cannot make, each for itself, separate regulations of commerce; they cannot lay imposts; they cannot coin money. If this Constitution, Sir, be the creature of State legislatures, it must be admitted that it has obtained a strange control over the volitions of its creators.

The people, then, Sir, erected this government. They gave it a Constitution, and in that Constitution they have enumerated the powers which they bestow on it. They have made it a limited government. They have defined its authority. They have restrained it to the exercise of such powers as are granted; and all others, they declare, are reserved to the States or the people. But, Sir, they have not stopped here. If they had, they would have accomplished but half their work. No definition can be so clear, as to avoid possibility of doubt; no limitation so precise, as to exclude all uncertainty. Who, then, shall construe this grant of the people? Who shall interpret their will, where it may be supposed they have left it doubtful? With whom do they repose this ultimate right of deciding on the powers of the government? Sir, they have settled all this in the fullest manner. They have left it with the government itself, in its appropriate branches. Sir, the very chief end, the main design, for which the whole Constitution was framed and adopted, was to establish a government that should not be obliged to act through State agency, or depend on State opinion and State discretion. The people had had quite enough of that kind of government under the Confederation. Under that system, the legal action, the application of law to individuals, belonged exclusively to the States. Congress could only recommend; their acts were not of binding force, till the States had adopted and sanctioned them. Are we in that condition still? Are we yet at the mercy of State discretion and State construction? Sir, if we are, then vain will be our attempt to maintain the Constitution under which we sit.

But, Sir, the people have wisely provided, in the Constitution itself, a proper, suitable mode and tribunal for settling questions of constitutional law. There are in the Constitution grants of powers to Congress, and restrictions on these powers. There are, also, prohibitions on the States. Some authority must, therefore, necessarily exist, having the ultimate jurisdiction to fix and ascertain the interpretation of these grants, restrictions, and prohibitions. The Constitution has itself pointed out, ordained, and established that authority. How has it accomplished this great and essential end? By declaring, Sir, that "*the Constitution, and the laws of the United States made in pursuance thereof, shall be the supreme law of the land, any thing in the constitution or laws of any State to the contrary notwithstanding.*"

This, Sir, was the first great step. By this the supremacy of the Constitution and laws of the United States is declared. The people so will it. No State law is to be valid which comes in conflict with the Constitution, or any law of the United States passed in pursuance of it. But who shall decide this question of interference? To whom lies the last appeal? This, Sir, the Constitution itself decides also, by declaring, "*that the judicial power shall extend to all cases arising under the Constitution and laws of the United States.*" These two provisions cover the whole ground. They are, in truth, the keystone of the arch! With these it is a government; without them it is a confederation. In pursuance of these clear and express provisions, Congress established, at its very first session, in the judicial act, a mode for carrying them into full effect, and for bringing all questions of constitutional power to the final decision of the Supreme Court. It then, Sir, became a government. It then had the means of self-protection; and but for this, it would, in all probability, have been now among things which are past. Having constituted the government, and declared its powers, the people have further said, that, since somebody must decide on the extent of these powers, the government shall itself decide; subject, always, like other popular governments, to its responsibility to the people. And now, Sir, I repeat, how is it that a State legislature acquires any power to interfere? Who, or what, gives them the right to say to the people, "We, who are your agents and servants for one purpose, will undertake to decide, that your other agents and servants, appointed by you for another purpose, have transcended the authority you gave them!" The reply would be, I think, not impertinent, — "Who made you a judge over another's servants? To their own masters they stand or fall."

Sir, I deny this power of State legislatures altogether. It cannot stand the test of examination. Gentlemen may say, that, in an extreme case, a State government might protect the people from intolerable oppression. Sir, in such a case, the people might protect themselves, without the aid of the State governments. Such a case warrants revolution. It must make, when it comes, a law for itself. A nullifying act of a State legislature cannot alter the case, nor make resistance any more lawful. In maintaining these sentiments, Sir, I am but asserting

the rights of the people. I state what they have declared, and insist on their right to declare it. They have chosen to repose this power in the general government, and I think it my duty to support it, like other constitutional powers.

For myself, Sir, I do not admit the competency of South Carolina, or any other State, to prescribe my constitutional duty; or to settle, between me and the people, the validity of laws of Congress, for which I have voted. I decline her umpirage. I have not sworn to support the Constitution according to her construction of its clauses. I have not stipulated, by my oath of office or otherwise, to come under any responsibility, except to the people, and those whom they have appointed to pass upon the question, whether laws, supported by my votes, conform to the Constitution of the country. And, Sir, if we look to the general nature of the case, could any thing have been more preposterous, than to make a government for the whole Union, and yet leave its powers subject, not to one interpretation, but to thirteen or twenty-four interpretations? Instead of one tribunal, established by all, responsible to all, with power to decide for all, shall constitutional questions be left to four-and-twenty popular bodies, each at liberty to decide for itself, and none bound to respect the decisions of others; and each at liberty, too, to give a new construction on every new election of its own members? Would any thing, with such a principle in it, or rather with such a destitution of all principle, be fit to be called a government? No, Sir. It should not be denominated a Constitution. It should be called, rather, a collection of topics for everlasting controversy; heads of debate for a disputatious people. It would not be a government. It would not be adequate to any practical good, or fit for any country to live under.

To avoid all possibility of being misunderstood, allow me to repeat again, in the fullest manner, that I claim no powers for the government by forced or unfair construction. I admit that it is a government of strictly limited powers; of enumerated, specified, and particularized powers; and that whatsoever is not granted, is withheld. But notwithstanding all this, and however the grant of powers may be expressed, its limit and extent may yet, in some cases, admit of doubt; and the general government would be good for nothing, it would be incapable of long

existing, if some mode had not been provided in which those doubts, as they should arise, might be peaceably, but authoritatively, solved.

And now, Mr. President, let me run the honorable gentleman's doctrine a little into its practical application. Let us look at his probable *modus operandi*. If a thing can be done, an ingenious man can tell *how* it is to be done, and I wish to be informed *how* this State interference is to be put in practice, without violence, bloodshed, and rebellion. We will take the existing case of the tariff law. South Carolina is said to have made up her opinion upon it. If we do not repeal it (as we probably shall not), she will then apply to the case the remedy of her doctrine. She will, we must suppose, pass a law of her legislature, declaring the several acts of Congress, usually called the tariff laws, null and void, so far as they respect South Carolina, or the citizens thereof. So far, all is a paper transaction, and easy enough. But the collector at Charleston is collecting the duties imposed by these tariff laws. He, therefore, must be stopped. The collector will seize the goods if the tariff duties are not paid. The State authorities will undertake their rescue, the marshal, with his posse, will come to the collector's aid, and here the contest begins. The militia of the State will be called out to sustain the nullifying act. They will march, Sir, under a very gallant leader; for I believe the honorable member himself commands the militia of that part of the State. He will raise the NULLIFYING ACT on his standard, and spread it out as his banner! It will have a preamble, setting forth, that the tariff laws are palpable, deliberate, and dangerous violations of the Constitution! He will proceed, with this banner flying, to the custom-house in Charleston,

> "All the while,
> Sonorous metal blowing martial sounds."

Arrived at the custom-house, he will tell the collector that he must collect no more duties under any of the tariff laws. This he will be somewhat puzzled to say, by the way, with a grave countenance, considering what hand South Carolina herself had in that of 1816. But, Sir, the collector would not, probably, desist, at his bidding. He would show him the law of Congress, the treasury instruction, and his own oath of office. He would say, he should perform his duty, come what come might.

Here would ensue a pause; for they say that a certain stillness precedes the tempest. The trumpeter would hold his breath awhile, and before all this military array should fall on the custom-house, collector, clerks, and all, it is very probable some of those composing it would request of their gallant commander-in-chief to be informed a little upon the point of law; for they have, doubtless, a just respect for his opinions as a lawyer, as well as for his bravery as a soldier. They know he has read Blackstone and the Constitution, as well as Turenne and Vauban. They would ask him, therefore, something concerning their rights in this matter. They would inquire, whether it was not somewhat dangerous to resist a law of the United States. What would be the nature of their offence, they would wish to learn, if they, by military force and array, resisted the execution in Carolina of a law of the United States, and it should turn out, after all, that the law *was constitutional?* He would answer, of course, Treason. No lawyer could give any other answer. John Fries, he would tell them, had learned that, some years ago. How, then, they would ask, do you propose to defend us? We are not afraid of bullets, but treason has a way of taking people off that we do not much relish. How do you propose to defend us? "Look at my floating banner," he would reply; "see there the *nullifying law!*" Is it your opinion, gallant commander, they would then say, that, if we should be indicted for treason, that same floating banner of yours would make a good plea in bar? "South Carolina is a sovereign State," he would reply. That is true; but would the judge admit our plea? "These tariff laws," he would repeat, "are unconstitutional, palpably, deliberately, dangerously." That may all be so; but if the tribunal should not happen to be of that opinion, shall we swing for it? We are ready to die for our country, but it is rather an awkward business, this dying without touching the ground! After all, that is a sort of hemp tax worse than any part of the tariff.

Mr. President, the honorable gentleman would be in a dilemma, like that of another great general. He would have a knot before him which he could not untie. He must cut it with his sword. He must say to his followers, "Defend yourselves with your bayonets"; and this is war, — civil war.

Direct collision, therefore, between force and force, is the un-

avoidable result of that remedy for the revision of unconstitutional laws which the gentleman contends for. It must happen in the very first case to which it is applied. Is not this the plain result? To resist by force the execution of a law, generally, is treason. Can the courts of the United States take notice of the indulgence of a State to commit treason? The common saying, that a State cannot commit treason herself, is nothing to the purpose. Can she authorize others to do it? If John Fries had produced an act of Pennsylvania, annulling the law of Congress, would it have helped his case? Talk about it as we will, these doctrines go the length of revolution. They are incompatible with any peaceable administration of the government. They lead directly to disunion and civil commotion; and therefore it is, that at their commencement, when they are first found to be maintained by respectable men, and in a tangible form, I enter my public protest against them all.

The honorable gentleman argues, that if this government be the sole judge of the extent of its own powers, whether that right of judging be in Congress or the Supreme Court, it equally subverts State sovereignty. This the gentleman sees, or thinks he sees, although he cannot perceive how the right of judging, in this matter, if left to the exercise of State legislatures, has any tendency to subvert the government of the Union. The gentleman's opinion may be, that the right *ought not* to have been lodged with the general government; he may like better such a constitution as we should have under the right of State interference; but I ask him to meet me on the plain matter of fact. I ask him to meet me on the Constitution itself. I ask him if the power is not found there, clearly and visibly found there?*

But, Sir, what is this danger, and what are the grounds of it? Let it be remembered, that the Constitution of the United States is not unalterable. It is to continue in its present form no longer than the people who established it shall choose to continue it. If they shall become convinced that they have made an injudicious or inexpedient partition and distribution of power between the State governments and the general government, they can alter that distribution at will.

* See Note C, at the end of the speech.

If any thing be found in the national Constitution, either by original provision or subsequent interpretation, which ought not to be in it, the people know how to get rid of it. If any construction, unacceptable to them, be established, so as to become practically a part of the Constitution, they will amend it, at their own sovereign pleasure. But while the people choose to maintain it as it is, while they are satisfied with it, and refuse to change it, who has given, or who can give, to the State legislatures a right to alter it, either by interference, construction, or otherwise? Gentlemen do not seem to recollect that the people have any power to do any thing for themselves. They imagine there is no safety for them, any longer than they are under the close guardianship of the State legislatures. Sir, the people have not trusted their safety, in regard to the general Constitution, to these hands. They have required other security, and taken other bonds. They have chosen to trust themselves, first, to the plain words of the instrument, and to such construction as the government themselves, in doubtful cases, should put on their own powers, under their oaths of office, and subject to their responsibility to them; just as the people of a State trust their own State governments with a similar power. Secondly, they have reposed their trust in the efficacy of frequent elections, and in their own power to remove their own servants and agents whenever they see cause. Thirdly, they have reposed trust in the judicial power, which, in order that it might be trustworthy, they have made as respectable, as disinterested, and as independent as was practicable. Fourthly, they have seen fit to rely, in case of necessity, or high expediency, on their known and admitted power to alter or amend the Constitution, peaceably and quietly, whenever experience shall point out defects or imperfections. And, finally, the people of the United States have at no time, in no way, directly or indirectly, authorized any State legislature to construe or interpret *their* high instrument of government; much less, to interfere, by their own power, to arrest its course and operation.

If, Sir, the people in these respects had done otherwise than they have done, their constitution could neither have been preserved, nor would it have been worth preserving. And if its plain provisions shall now be disregarded, and these new doctrines interpolated in it, it will become as feeble and helpless a

being as its enemies, whether early or more recent, could possibly desire. It will exist in every State but as a poor dependent on State permission. It must borrow leave to be; and will be, no longer than State pleasure, or State discretion, sees fit to grant the indulgence, and to prolong its poor existence.

But, Sir, although there are fears, there are hopes also. The people have preserved this, their own chosen Constitution, for forty years, and have seen their happiness, prosperity, and renown grow with its growth, and strengthen with its strength. They are now, generally, strongly attached to it. Overthrown by direct assault, it cannot be; evaded, undermined, NULLIFIED, it will not be, if we, and those who shall succeed us here, as agents and representatives of the people, shall conscientiously and vigilantly discharge the two great branches of our public trust, faithfully to preserve, and wisely to administer it.

Mr. President, I have thus stated the reasons of my dissent to the doctrines which have been advanced and maintained. I am conscious of having detained you and the Senate much too long. I was drawn into the debate with no previous deliberation, such as is suited to the discussion of so grave and important a subject. But it is a subject of which my heart is full, and I have not been willing to suppress the utterance of its spontaneous sentiments. I cannot, even now, persuade myself to relinquish it, without expressing once more my deep conviction, that, since it respects nothing less than the Union of the States, it is of most vital and essential importance to the public happiness. I profess, Sir, in my career hitherto, to have kept steadily in view the prosperity and honor of the whole country, and the preservation of our Federal Union. It is to that Union we owe our safety at home, and our consideration and dignity abroad. It is to that Union that we are chiefly indebted for whatever makes us most proud of our country. That Union we reached only by the discipline of our virtues in the severe school of adversity. It had its origin in the necessities of disordered finance, prostrate commerce, and ruined credit. Under its benign influences, these great interests immediately awoke, as from the dead, and sprang forth with newness of life. Every year of its duration has teemed with fresh proofs of its utility and its blessings; and although our territory has stretched out wider and wider, and our population spread farther and farther, they have not

outrun its protection or its benefits. It has been to us all a copious fountain of national, social, and personal happiness.

I have not allowed myself, Sir, to look beyond the Union, to see what might lie hidden in the dark recess behind. I have not coolly weighed the chances of preserving liberty when the bonds that unite us together shall be broken asunder. I have not accustomed myself to hang over the precipice of disunion, to see whether, with my short sight, I can fathom the depth of the abyss below; nor could I regard him as a safe counsellor in the affairs of this government, whose thoughts should be mainly bent on considering, not how the Union may be best preserved, but how tolerable might be the condition of the people when it should be broken up and destroyed. While the Union lasts, we have high, exciting, gratifying prospects spread out before us, for us and our children. Beyond that I seek not to penetrate the veil. God grant that in my day, at least, that curtain may not rise! God grant that on my vision never may be opened what lies behind! When my eyes shall be turned to behold for the last time the sun in heaven, may I not see him shining on the broken and dishonored fragments of a once glorious Union; on States dissevered, discordant, belligerent; on a land rent with civil feuds, or drenched, it may be, in fraternal blood! Let their last feeble and lingering glance rather behold the gorgeous ensign of the republic, now known and honored throughout the earth, still full high advanced, its arms and trophies streaming in their original lustre, not a stripe erased or polluted, nor a single star obscured, bearing for its motto, no such miserable interrogatory as "What is all this worth?" nor those other words of delusion and folly, "Liberty first and Union afterwards"; but everywhere, spread all over in characters of living light, blazing on all its ample folds, as they float over the sea and over the land, and in every wind under the whole heavens, that other sentiment, dear to every true American heart, — Liberty *and* Union, now and for ever, one and inseparable!

Last Remarks on Foot's Resolution*

Mr. Hayne having rejoined to Mr. Webster, especially on the constitutional question, Mr. Webster rose, and, in conclusion, said: —

A few words, Mr. President, on this constitutional argument, which the honorable gentleman has labored to reconstruct.

His argument consists of two propositions and an inference. His propositions are, —

1. That the Constitution is a compact between the States.

2. That a compact between two, with authority reserved to one to interpret its terms, would be a surrender to that one of all power whatever.

3. Therefore, (such is his inference,) the general government does not possess the authority to construe its own powers.

Now, Sir, who does not see, without the aid of exposition or detection, the utter confusion of ideas involved in this so elaborate and systematic argument.

The Constitution, it is said, is a compact *between States;* the States, then, and the States only, *are parties* to the compact. How comes the general government itself *a party?* Upon the honorable gentleman's hypothesis, the general government is the result of the compact, the creature of the compact, not one of the parties to it. Yet the argument, as the gentleman has now stated it, makes the government itself one of its own creators. It makes it a party to that compact to which it owes its own existence.

For the purpose of erecting the Constitution on the basis of a compact, the gentleman considers the States as parties to that compact; but as soon as his compact is made, then he chooses

* Delivered in the Senate, on the 27th of January, 1830.

to consider the general government, which is the offspring of that compact, not its offspring, but one of its parties; and so being a party, without the power of judging on the terms of compact. Pray, Sir, in what school is such reasoning as this taught?

If the whole of the gentleman's main proposition were conceded to him; that is to say, if I admit, for the sake of the argument, that the Constitution is a compact between States, the inferences which he draws from that proposition are warranted by no just reasoning. If the Constitution be a compact between States, still that Constitution, or that compact, has established a government, with certain powers; and whether it be one of those powers, that it shall construe and interpret for itself the terms of the compact, in doubtful cases, is a question which can only be decided by looking to the compact, and inquiring what provisions it contains on this point. Without any inconsistency with natural reason, the government even thus created might be trusted with this power of construction. The extent of its powers, therefore, must still be sought for in the instrument itself.

If the old Confederation had contained a clause, declaring that resolutions of the Congress should be the supreme law of the land, any State law or constitution to the contrary notwithstanding, and that a committee of Congress, or any other body created by it, should possess judicial powers, extending to all cases arising under resolutions of Congress, then the power of ultimate decision would have been vested in Congress under the confederation, although that confederation was a compact between States; and for this plain reason; that it would have been competent to the States, who alone were parties to the compact, to agree who should decide in cases of dispute arising on the construction of the compact.

For the same reason, Sir, if I were now to concede to the gentleman his principal proposition, namely, that the Constitution is a compact between States, the question would still be, What provision is made, in this compact, to settle points of disputed construction, or contested power, that shall come into controversy? And this question would still be answered, and conclusively answered, by the Constitution itself.

While the gentleman is contending against construction, he

himself is setting up the most loose and dangerous construction. The Constitution declares, that *the laws of Congress passed in pursuance of the Constitution shall be the supreme law of the land.* No construction is necessary here. It declares, also, with equal plainness and precision, *that the judicial power of the United States shall extend to every case arising under the laws of Congress.* This needs no construction. Here is a law, then, which is declared to be supreme; and here is a power established, which is to interpret that law. Now, Sir, how has the gentleman met this? Suppose the Constitution to be a compact, yet here are its terms; and how does the gentleman get rid of them? He cannot argue the *seal off the bond*, nor the words out of the instrument. Here they are; what answer does he give to them? None in the world, Sir, except, that the effect of this would be to place the States in a condition of inferiority; and that it results from the very nature of things, there being no superior, that the parties must be their own judges! Thus closely and cogently does the honorable gentleman reason on the words of the Constitution. The gentleman says, if there be such a power of final decision in the general government, he asks for the grant of that power. Well, Sir, I show him the grant. I turn him to the very words. I show him that the laws of Congress are made supreme; and that the judicial power extends, by express words, to the interpretation of these laws. Instead of answering this, he retreats into the general reflection, that it must result *from the nature of things*, that the States, being parties, must judge for themselves.

I have admitted, that, if the Constitution were to be considered as the creature of the State governments, it might be modified, interpreted, or construed according to their pleasure. But, even in that case, it would be necessary that they should *agree.* One alone could not interpret it conclusively; one alone could not construe it; one alone could not modify it. Yet the gentleman's doctrine is, that Carolina alone may construe and interpret that compact which equally binds all, and gives equal rights to all.

So, then, Sir, even supposing the Constitution to be a compact between the States, the gentleman's doctrine, nevertheless, is not maintainable; because, first, the general government is not a party to that compact, but a *government* established

by it, and vested by it with the powers of trying and deciding doubtful questions; and secondly, because, if the Constitution be regarded as a compact, not one State only, but all the States, are parties to that compact, and one can have no right to fix upon it her own peculiar construction.

So much, Sir, for the argument, even if the premises of the gentleman were granted, or could be proved. But, Sir, the gentleman has failed to maintain his leading proposition. He has not shown, it cannot be shown, that the Constitution is a compact between State governments. The Constitution itself, in its very front, refutes that idea; it declares that it is ordained and established *by the people of the United States.* So far from saying that it is established by the governments of the several States, it does not even say that it is established by the people *of the several States;* but it pronounces that it is established by the people of the United States, in the aggregate. The gentleman says, it must mean no more than the people of the several States. Doubtless, the people of the several States, taken collectively, constitute the people of the United States; but it is in this, their collective capacity, it is as all the people of the United States, that they establish the Constitution. So they declare; and words cannot be plainer than the words used.

When the gentleman says the Constitution is a compact between the States, he uses language exactly applicable to the old Confederation. He speaks as if he were in Congress before 1789. He describes fully that old state of things then existing. The Confederation was, in strictness, a compact; the States, as States, were parties to it. We had no other general government. But that was found insufficient, and inadequate to the public exigencies. The people were not satisfied with it, and undertook to establish a better. They undertook to form a general government, which should stand on a new basis; not a confederacy, not a league, not a compact between States, but a *Constitution;* a popular government, founded in popular election, directly responsible to the people themselves, and divided into branches with prescribed limits of power, and prescribed duties. They ordained such a government, they gave it the name of a *Constitution,* and therein they established a distribution of powers between this, their general government, and their several

State governments. When they shall become dissatisfied with this distribution, they can alter it. Their own power over their own instrument remains. But until they shall alter it, it must stand as their will, and is equally binding on the general government and on the States.

The gentleman, Sir, finds analogy where I see none. He likens it to the case of a treaty, in which, there being no common superior, each party must interpret for itself, under its own obligation of good faith. But this is not a treaty, but a constitution of government, with powers to execute itself, and fulfil its duties.

I admit, Sir, that this government is a government of checks and balances; that is, the House of Representatives is a check on the Senate, and the Senate is a check on the House, and the President a check on both. But I cannot comprehend him, or, if I do, I totally differ from him, when he applies the notion of checks and balances to the interference of different governments. He argues, that, if we transgress our constitutional limits, each State, as a State, has a right to check us. Does he admit the converse of the proposition, that we have a right to check the States? The gentleman's doctrines would give us a strange jumble of authorities and powers, instead of governments of separate and defined powers. It is the part of wisdom, I think, to avoid this; and to keep the general government and the State government each in its proper sphere, avoiding as carefully as possible every kind of interference.

Finally, Sir, the honorable gentleman says, that the States will only interfere, by their power, to preserve the Constitution. They will not destroy it, they will not impair it; they will only save, they will only preserve, they will only strengthen it! Ah! Sir, this is but the old story. All regulated governments, all free governments, have been broken by similar disinterested and well disposed interference. It is the common pretence. But I take leave of the subject.

Notes

NOTE A. Page 15.

Extract from the Journal of the Congress of the Confederation.

Wednesday, 21st February, 1787.

Congress assembled: Present, as before. The report of a grand committee, consisting of Mr. Dane, Mr. Varnum, Mr. S. M. Mitchell, Mr. Smith, Mr. Cadwallader, Mr. Irvine, Mr. N. Mitchell, Mr. Forrest, Mr. Grayson, Mr. Blount, Mr. Bull, and Mr. Few, to whom was referred a letter of 14th September, 1786, from J. Dickinson, written at the request of commissioners from the States of Virginia, Delaware, Pennsylvania, New Jersey, and New York, assembled at the city of Annapolis, together with a copy of the report of said commissioners to the legislatures of the States by whom they were appointed, being an order of the day, was called up, and which is contained in the following resolution, viz.: —

"Congress having had under consideration the letter of John Dickinson, Esq., chairman of the commissioners who assembled at Annapolis during the last year, also the proceedings of the said commissioners, and entirely coinciding with them as to the inefficiency of the federal government, and the necessity of devising such further provisions as shall render the same adequate to the exigencies of the Union, do strongly recommend to the different legislatures to send forward delegates to meet the proposed Convention, on the second Monday in May next, at the city of Philadelphia."

NOTE B. Page 31.

Extract from Mr. Calhoun's Speech in the House of Representatives, April, 1816, on Mr. Randolph's Motion to strike out the Minimum Valuation on Cotton Goods.

"The debate, heretofore, on this subject, has been on the degree of protection which ought to be afforded to our cotton and woollen manu-

factures; all professing to be friendly to those infant establishments, and to be willing to extend to them adequate encouragement. The present motion assumes a new aspect. It is introduced, professedly, on the ground that manufactures ought not to receive any encouragement; and will, in its operation, leave our cotton establishments exposed to the competition of the cotton goods of the East Indies, which, it is acknowledged on all sides, they are not capable of meeting with success, without the proviso proposed to be stricken out by the motion now under discussion. Till the debate assumed this new form, he (Mr. Calhoun) determined to be silent; participating, as he largely did, in that general anxiety which is felt, after so long and laborious a session, to return to the bosom of our families. But on a subject of such vital importance, touching, as it does, the security and permanent prosperity of our country, he hoped that the House would indulge him in a few observations.

"To give perfection to this state of things, it will be necessary to add, as soon as possible, a system of internal improvements, and, at least, such an extension of our navy as will prevent the cutting off our coasting trade. The advantage of each is so striking as not to require illustration, especially after the experience of the late war.

"He firmly believed that the country is prepared, even to maturity, for the introduction of manufactures. We have abundance of resources, and things naturally tend, at this moment, in that direction. A prosperous commerce has poured an immense amount of commercial capital into this country. This capital has till lately found occupation in commerce; but that state of the world which transferred it to this country and gave it active employment, has passed away, never to return. Where shall we now find full employment for our prodigious amount of tonnage? Where, markets for the numerous and abundant products of our country? This great body of active capital, which, *for the moment*, has found sufficient employment in supplying our markets, exhausted by the war and measures preceding it, must find a new direction; it will not be idle. What channel can it take but that of manufactures? This, if things continue as they are, will be its direction. It will introduce an era in our affairs, in many respects highly advantageous, and which ought to be countenanced by the government.

"Besides, we have already surmounted the greatest difficulty that has ever been found in undertakings of this kind. The cotton and woollen manufactures are not to be *introduced*, — they are *already* introduced to a great extent; freeing us entirely from the hazards, and, in a great measure, the sacrifices, experienced in giving the capital of the country a new direction. The restrictive measures, and the war, though not in-

tended for that purpose, have, by the necessary operation of things, turned a large amount of capital to this new branch of industry. He had often heard it said, both in and out of Congress, that this effect alone would indemnify the country for all its losses. So high was this tone of feeling when the want of these establishments was practically felt, that he remembered, during the war, when some question was agitated respecting the introduction of foreign goods, that many then opposed it on the ground of injuring our manufactures. He then said, that war alone furnished sufficient stimulus, and perhaps too much, as it would make their growth unnaturally rapid; but that, on the return of peace, it would then be time to show our affection for them. He at that time did not expect an apathy and aversion to the extent which is now seen.

"But it will no doubt be said, if they are so far established, and if the situation of the country is so favorable to their growth, where is the necessity of affording them protection? It is to put them beyond the reach of contingency.

"It has been further asserted, that manufactures are the fruitful cause of pauperism; and England has been referred to as furnishing conclusive evidence of its truth. For his part, he could perceive no such tendency in them, but the exact contrary, as they furnished new stimulus and means of subsistence to the laboring classes of the community. We ought not to look at the cotton and woollen establishments of Great Britain for the prodigious numbers of poor with which her population was disgraced; causes much more efficient exist. Her poor laws, and statutes regulating the prices of labor, with taxes, were the real causes. But if it must be so, if the mere fact that England manufactured more than any other country, explained the cause of her having more beggars, it is just as reasonable to refer to the same cause her courage, spirit, and all her masculine virtues, in which she excels all other nations, with a single exception; he meant our own, in which we might, without vanity, challenge a preëminence.

"Another objection had been, which he must acknowledge was better founded, that capital employed in manufacturing produced a greater dependence on the part of the employed, than in commerce, navigation, or agriculture. It is certainly an evil, and to be regretted, but he did not think it a decisive objection to the system; especially when it had incidental political advantages, which, in his opinion, more than counterpoised it. It produced an interest strictly American, as much so as agriculture, in which it had the decided advantage of commerce or navigation. The country will from this derive much advantage.

"Again: it is calculated to bind together more closely our widely spread republic. It will greatly increase our mutual dependence and

intercourse; and will, as a necessary consequence, excite an increased attention to internal improvements, a subject every way so intimately connected with the ultimate attainment of national strength, and the perfection of our political institutions."

Extract from the Speech of Mr. Calhoun, April, 1816, on the Direct Tax.

In regard to the question, how far manufactures ought to be fostered, Mr. Calhoun said, "It was the duty of this country, as a means of defence, to encourage the domestic industry of the country, more especially that part of it which provides the necessary materials for clothing and defence. Let us look to the nature of the war most likely to occur. England is in the possession of the ocean. No man, however sanguine, can believe that we can deprive her soon of her predominance there. That control deprives us of the means of keeping our army and navy cheaply clad. The question relating to manufactures must not depend on the abstract principle, that industry, left to pursue its own course, will find in its own interest all the encouragement that is necessary. I lay the claims of the manufacturers entirely out of view," said Mr. Calhoun; "but, on general principles, without regard to their interest, a certain encouragement should be extended, at least, to our woollen and cotton manufactures.

"This nation," Mr. Calhoun said, "was rapidly changing the character of its industry. When a nation is agricultural, depending for supply on foreign markets, its people may be taxed through its imports almost to the amount of its capacity. The nation was, however, rapidly becoming, to a considerable extent, a manufacturing nation."

To the quotations from the speeches and proceedings of the Representatives of South Carolina in Congress, during Mr. Monroe's administration, may be added the following extract from Mr. Calhoun's report on roads and canals, submitted to Congress on the 7th of January, 1819, from the Department of War: —

"A judicious system of roads and canals, constructed for the convenience of commerce and the transportation of the mail only, without any reference to military operations, is itself among the most efficient means for the 'more complete defence of the United States.' Without adverting to the fact, that the roads and canals which such a system would require are, with few exceptions, precisely those which would be required for the operations of war; such a system, by consolidating our Union and increasing our wealth and fiscal capacity, would add greatly to our resources in war. It is in a state of war, when a nation is compelled to put all its resources, in men, money, skill, and devotion to country, into

requisition, that its government realizes in its security the beneficial effects from a people made prosperous and happy by a wise direction of its resources in peace.

"Should Congress think proper to commence a system of roads and canals for the 'more complete defence of the United States,' the disbursements of the sum appropriated for the purpose might be made by the Department of War, under the direction of the President. Where incorporated companies are already formed, or the road or canal commenced, under the superintendence of a State, it perhaps would be advisable to direct a subscription on the part of the United States, on such terms and conditions as might be thought proper."

NOTE C. Page 72.

The following resolutions of the Legislature of Virginia bear so pertinently and so strongly on this point of the debate, that they are thought worthy of being inserted in a note, especially as other resolutions of the same body are referred to in the discussion. It will be observed that these resolutions were unanimously adopted in each house.

VIRGINIA LEGISLATURE.

Extract from the Message of Governor Tyler, December 4, 1809.

"A proposition from the State of Pennsylvania is herewith submitted, with Governor Snyder's letter accompanying the same, in which is suggested the propriety of amending the Constitution of the United States, so as to prevent collision between the government of the Union and the State governments."

House of Delegates, *Friday, December* 15, 1809.

On motion, *Ordered*, That so much of the Governor's communication as relates to the communication from the Governor of Pennsylvania, on the subject of an amendment proposed by the Legislature of that State to the Constitution of the United States, be referred to Messrs. Peyton, Otey, Cabell, Walker, Madison, Holt, Newton, Parker, Stevenson, Randolph (of Amelia), Cocke, Wyatt, and Ritchie. — *Journal*, p. 25.

Thursday, January 11, 1810.

Mr. Peyton, from the committee to whom was referred that part of the Governor's communication which relates to the amendment proposed by the State of Pennsylvania to the Constitution of the United States, made the following report: —

The committee to whom was referred the communication of the Gov-

ernor of Pennsylvania, covering certain resolutions of the Legislature of that State, proposing an amendment of the Constitution of the United States, by the appointment of an impartial tribunal to decide disputes between the States and Federal Judiciary, have had the same under their consideration, and are of opinion that a tribunal is already provided by the Constitution of the United States; to wit, the Supreme Court, more eminently qualified, from their habits and duties, from the mode of their selection, and from the tenure of their offices, to decide the disputes aforesaid in an enlightened and impartial manner, than any other tribunal which could be created.

The members of the Supreme Court are selected from those in the United States who are most celebrated for virtue and legal learning, not at the will of a single individual, but by the concurrent wishes of the President and Senate of the United States; they will, therefore, have no local prejudices and partialities. The duties they have to perform lead them, necessarily, to the most enlarged and accurate acquaintance with the jurisdiction of the Federal and State courts together, and with the admirable symmetry of our government. The tenure of their offices enables them to pronounce the sound and correct opinions they may have formed, without fear, favor, or partiality.

The amendment to the Constitution proposed by Pennsylvania seems to be founded upon the idea that the Federal Judiciary will, from a lust of power, enlarge their jurisdiction to the total annihilation of the jurisdiction of the State courts; that they will exercise their will, instead of the law and the Constitution.

This argument, if it proves any thing, would operate more strongly against the tribunal proposed to be created, which promises so little, than against the Supreme Court, which, for the reasons given before, have every thing connected with their appointment calculated to insure confidence. What security have we, were the proposed amendment adopted, that this tribunal would not substitute their will and their pleasure in place of the law? The judiciary are the weakest of the three departments of government, and least dangerous to the political rights of the Constitution; they hold neither the purse nor the sword; and, even to enforce their own judgments and decisions, must ultimately depend upon the executive arm. Should the Federal Judiciary, however, unmindful of their weakness, unmindful of the duty which they owe to themselves and their country, become corrupt, and transcend the limits of their jurisdiction, would the proposed amendment oppose even a probable barrier in such an improbable state of things?

The creation of a tribunal such as is proposed by Pennsylvania, so far as we are able to form an idea of it, from the description given in the resolutions of the Legislature of that State, would in the opinion of

your committee, tend rather to invite than to prevent collisions between the Federal and State courts. It might also become, in process of time, a serious and dangerous embarrassment to the operations of the general government.

Resolved, therefore, That the Legislature of this State do disapprove of the amendment to the Constitution of the United States proposed by the Legislature of Pennsylvania.

Resolved, also, That his Excellency, the Governor, be, and he is hereby, requested to transmit forthwith a copy of the foregoing preamble and resolutions to each of the Senators and Representatives of this State in Congress, and to the executive of the several States in the Union, with a request that the same be laid before the legislatures thereof.

The said resolutions, being read a second time, were, on motion, ordered to be referred to a committee of the whole house on the state of the Commonwealth.

Tuesday, January 23, 1810.

The House, according to the order of the day, resolved itself into a committee of the whole house on the state of the Commonwealth, and, after some time spent therein, Mr. Speaker resumed the chair, and Mr. Stanard of Spottsylvania reported that the committee had, according to order, had under consideration the preamble and resolutions of the select committee to whom was referred that part of the Governor's communication which relates to the amendment proposed to the Constitution of the United States by the Legislature of Pennsylvania, had gone through with the same, and directed him to report them to the house without amendment; which he handed in at the clerk's table.

And the question being put on agreeing to the said preamble and resolutions, they were agreed to by the House unanimously.

Ordered, That the clerk carry the said preamble and resolutions to the Senate, and desire their concurrence.

In Senate, *Wednesday, January* 24, 1810.

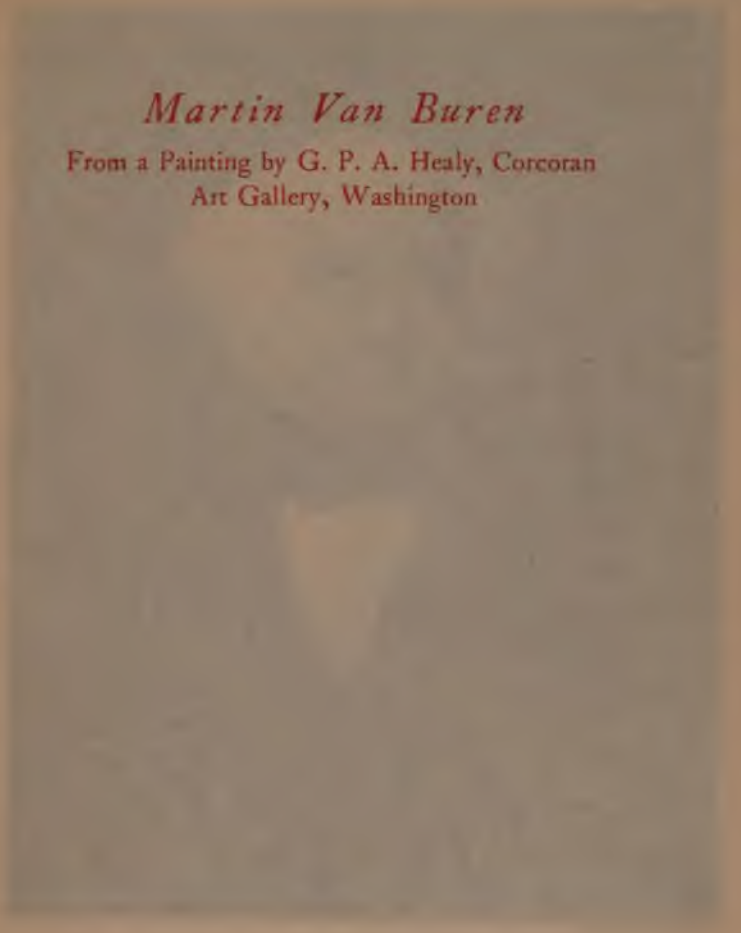
The preamble and resolutions on the amendment to the Constitution of the United States proposed by the Legislature of Pennsylvania, by the appointment of an impartial tribunal to decide disputes between the States and Federal Judiciary, being also delivered in and twice read, on motion, were ordered to be committed to Messrs. Nelson, Currie, Campbell, Upshur, and Wolfe.

Friday, January 26, 1810.

Mr. Nelson reported, from the committee to whom was committed the

preamble and resolutions on the amendment proposed by the Legislature of Pennsylvania, &c., that the committee had, according to order, taken the said preamble, &c., under their consideration, and directed him to report them without any amendment.

And on the question being put thereupon, the same was agreed to *unanimously*



Martin Van Buren

From a Painting by G. P. A. Healy, Corcoran Art Gallery, Washington

The Nomination of Mr. Van Buren as Minister to England*

MR. PRESIDENT, as it is highly probable that our proceedings on this nomination will be published, I deem it proper to state shortly the considerations which have influenced my opinion, and will decide my vote.

I regard this as a very important and delicate question. It is full of responsibility; and I feel the whole force of that responsibility. While I have been in the Senate, I have opposed no nomination of the President, except for cause; and I have at all times thought that such cause should be plain and sufficient; that it should be real and substantial, not unfounded or fanciful.

I have never desired, and do not now desire, to encroach in the slightest degree on the constitutional powers of the chief magistrate of the nation. I have heretofore gone far, very far, in assenting to nominations which have been submitted to us. I voted for the appointment of all the gentlemen who composed the first cabinet; I have opposed no nomination of a foreign minister; and I have not opposed the nominations recently before us, for the reorganization of the administration. I have always been especially anxious, that, in all matters relating to our intercourse with other nations, the utmost harmony, the greatest unity of purpose, should exist between the President and the Senate. I know how much of usefulness to the public service such harmony and union are calculated to produce.

I am now fully aware, Sir, that it is a serious, a very serious matter, to vote against the confirmation of a minister to a foreign court, who has already gone abroad, and has been received

* Remarks made in Secret Session of the Senate of the United States, on the 24th of January, 1832, on the Nomination of Mr. Van Buren as Minister to Great Britain.

and accredited by the government to which he is sent. I am aware that the rejection of this nomination, and the necessary recall of the minister, will be regarded by foreign states, at the first blush, as not in the highest degree favorable to the character of our government. I know, moreover, to what injurious reflections one may subject himself, especially in times of party excitement, by giving a negative vote on such a nomination. But, after all, I am placed here to discharge *a duty*. I am not to go through a formality; I am to perform a substantial and responsible *duty*. I am to *advise* the President in matters of appointment. This is my constitutional obligation; and I shall perform it conscientiously and fearlessly. I am bound to say, then, Sir, that, for one, I do not advise nor consent to this nomination. I do not think it a fit and proper nomination; and my reasons are found in the letter of instructions written by Mr. Van Buren, on the 20th of July, 1829, to Mr. McLane, then going to the court of England, as American Minister. I think these instructions derogatory, in a high degree, to the character and honor of the country. I think they show a manifest disposition in the writer of them to establish a distinction between his country and his party; to place that party above the country; to make interest at a foreign court for that party rather than for the country; to persuade the English ministry, and the English monarch, that *they* have an interest in maintaining in the United States the ascendency of the party to which the writer belongs. Thinking thus of the purpose and object of these instructions, I cannot be of opinion that their author is a proper representative of the United States at that court. Therefore it is, that I propose to vote against his nomination. It is the first time, I believe, in modern diplomacy, it is certainly the first time in our history, in which a minister to a foreign court has sought to make favor for one party at home against another, or has stooped from being the representative of the whole country to be the representative of a party. And as this is the first instance in our history of any such transaction, so I intend to do all in my power to make it the last. For one, I set my mark of disapprobation upon it; I contribute my voice and my vote to make it a negative example, to be shunned and avoided by all future ministers of the United States. If, in a deliberate and formal letter of instructions, admonitions and directions are

given to a minister, and repeated, once and again, to urge these mere party considerations on the foreign government, to what extent is it probable the writer himself will be disposed to urge them, in his thousand opportunities of informal intercourse with the agents of that government?

I propose, Sir, to refer to some particular parts of these instructions; but before I do that, allow me to state, very generally, the posture of the subject to which those particulars relate. That subject is the state of our trade with the British West India colonies. I do not deem it necessary now to go minutely into all the history of that trade. The occasion does not call for it. All know, that, by the convention of 1815, a reciprocity of intercourse was established between us and Great Britain. The ships of both countries were allowed to pass to and from each other respectively, with the same cargoes, and subject to the same duties. But this arrangement did not extend to the British West Indies. There our intercourse was cut off. Various discriminating and retaliatory acts were passed by England and by the United States. Eventually, in the summer of 1825, the English Parliament passed an act, offering reciprocity, *so far as the mere carrying trade was concerned*, to all nations who might choose, within one year, to accept that offer.

Mr. Adams's administration did not accept that offer; first, because it was never officially communicated to it; secondly, because, only a few months before, a negotiation on the very same subject had been suspended, with an understanding that it might be resumed; and, thirdly, because it was very desirable to arrange the whole matter, if possible, by treaty, in order to secure, if we could, *the admission of our products into the British islands for consumption*, as well as the admission of our vessels. This object had been earnestly pursued ever since the peace of 1815. It was insisted on, as every body knows, through the whole of Mr. Monroe's administration. He would not treat at all, without treating of this object. He thought the existing state of things better than any arrangement which, while it admitted our *vessels* into West India ports, still left our *productions* subject to such duties there, that they could not be carried.

Now, Sir, Mr. Adams's administration was not the first to take this ground. It only occupied the same position which its

predecessor had taken. It saw no important objects to be gained by changing the state of things, unless that change was to admit our products into the British West Indies directly from our ports, and not burdened with excessive duties. The direct trade, by English enactments and American enactments, had become closed. No British ship came here from the British West Indies. No American ship went hence to those places. A circuitous trade took place through the islands of third powers; and that circuitous trade was, in many respects, not disadvantageous to us.

In this state of things, Sir, Mr. McLane was sent to England; and he received his instructions from the Secretary of State. In these instructions, and in relation to this subject of the colonial trade, are found the sentiments of which I complain. What are they? Let us examine and see.

Mr. Van Buren tells Mr. McLane, "The opportunities which you have derived from a participation in our public counsels, as well as other sources of information, will enable you to speak with confidence (as far as you may deem it proper and useful so to do) of the respective parts taken by those to whom the administration of this government is now committed, in relation to the course heretofore pursued upon the subject of the colonial trade."

Now, this is neither more nor less than saying, "You will be able to tell the British minister, whenever you think proper, that you, and I, and the leading persons in this administration, have opposed the course heretofore pursued by the government, and the country, on the subject of the colonial trade. Be sure to let him know, that, on that subject, we have held with England, and not with our own government." Now, I ask you, Sir, if this be dignified diplomacy. Is this statesmanship? Is it patriotism, or is it mere party? Is it a proof of a high regard to the honor and renown of the whole country, or is it evidence of a disposition to make a merit of belonging to one of its political divisions?

The Secretary proceeds: "Their views" (that is, the views of the present administration) "upon that point have been submitted to the people of the United States; and the counsels by which your conduct is now directed are the result of the judgment expressed by the only earthly tribunal to which the late administration was amenable for its acts."

Now, Sir, in the first place, there is very little reason to suppose that the *first* part of this paragraph is true, in point of fact; I mean that part which intimates that the change of administration was brought about by public disapprobation of Mr. Adams's conduct respecting the subject of the colonial trade. Possibly so much was then said on a subject which so few understood, that some degree of impression may have been produced by it. But be assured, Sir, another cause will be found, by future historians, for this change; and that cause will be the popularity of a successful soldier, united with a feeling, made to be considerably extensive, that the preferences of the people in his behalf had not been justly regarded on a previous occasion. There is, Sir, very little ground to say that "the only tribunal to which the late administration was amenable" has pronounced any judgment against it for its conduct on the whole subject of the colonial trade.

But, however this may be, the *other* assertion in the paragraph is manifestly quite wide of the facts. Mr. Adams's administration did not bring forward this claim. I have stated, already, that it had been a subject both of negotiation and legislation through the whole eight years of Mr. Monroe's administration. This the Secretary knew, or was bound to know. Why, then, does he speak of it as set up by the late administration, and afterwards abandoned by them, and not now revived?

But the most humiliating part of the whole follows:—"To set up the acts of the late administration as the cause of forfeiture of privileges which would otherwise be extended to the people of the United States, would, under existing circumstances, be unjust in itself, and could not fail to excite their deepest sensibility."

So, then, Mr. President, we are reduced, are we, to the poor condition, that we see a minister of this great republic instructed to argue, or to intercede, with the British minister, lest he should find us to have forfeited our privileges; and lest these privileges should no longer be extended to us! And we have forfeited those privileges by our misbehavior in choosing rulers, who thought better of our own claim than of the British! Why, Sir, this is patiently submitting to the domineering tone of the British minister, I believe Mr. Huskisson—[Mr. Clay said, "No,

Mr. Canning."] — Mr. Canning, then, Sir, who told us that all our trade with the West Indies was a boon, granted to us by the indulgence of England. The British minister calls it a boon, and our minister admits it as a privilege, and hopes that his Majesty will be too gracious to decide that we have forfeited this privilege, by our misbehavior in the choice of our rulers! Sir, for one, I reject all idea of holding any right of trade, or any other rights, as a privilege or a boon from the British government, or any other government.

At the conclusion of the paragraph, the Secretary says, "You cannot press this view of the subject too earnestly upon the consideration of the British ministry. It has bearings and relations that reach beyond the immediate question under discussion."

Adverting again to the same subject, towards the close of the despatch, he says, "I will add nothing as to the impropriety of suffering any feelings that find their origin in the past pretensions of this government to have an adverse influence upon the present conduct of Great Britain."

I ask again, Mr. President, if this be statesmanship? if this be dignity? if this be elevated regard for country? Can any man read this whole despatch with candor, and not admit that it is plainly and manifestly the writer's intention to promote the interests of his party at the expense of those of the country?

Lest I should do the Secretary injustice, I will read all that I find, in this letter, upon this obnoxious point. These are the paragraphs: —

"Such is the present state of our commercial relations with the British colonies; and such the steps by which we have arrived at it. In reviewing the events which have preceded, and more or less contributed to, a result so much to be regretted, there will be found three grounds upon which we are most assailable; — 1st. In our too long and too tenaciously resisting the right of Great Britain to impose protecting duties in her colonies; 2d," &c.

"The opportunities which you have derived from a participation in our public counsels, as well as other sources of information, will enable you to speak with confidence (as far as you may deem it proper and useful so to do) of the respective parts taken by those to whom the administration of this government is now committed, in relation to the course heretofore pursued upon the subject of the colonial trade. Their

views upon that point have been submitted to the people of the United States; and the counsels by which your conduct is now directed are the result of the judgment expressed by the only earthly tribunal to which the late administration was amenable for its acts. It should be sufficient that the claims set up by them, and which caused the interruption of the trade in question, have been explicitly abandoned by those who first asserted them, and are not revived by their successors. If Great Britain deems it adverse to her interests to allow us to participate in the trade with her colonies, and finds nothing in the extension of it to others to induce her to apply the same rule to us, she will, we hope, be sensible of the propriety of placing her refusal on those grounds. To set up the acts of the late administration as the cause of forfeiture of privileges which would otherwise be extended to the people of the United States, would, under existing circumstances, be unjust in itself, and could not fail to excite their deepest sensibility. The tone of feeling which a course so unwise and untenable is calculated to produce, would doubtless be greatly aggravated by the consciousness that Great Britain has, by order in council, opened her colonial ports to Russia and France, notwithstanding a similar omission on their part to accept the terms offered by the act of July, 1825. You cannot press this view of the subject too earnestly upon the consideration of the British ministry. It has bearings and relations that reach beyond the immediate question under discussion."

"I will add nothing as to the impropriety of suffering any feelings that find their origin in the past pretensions of this government to have an adverse influence upon the present conduct of Great Britain."

Sir, I submit to you, and to the candor of all just men, if I am not right in saying that the pervading topic, through the whole, is, not American rights, not American interests, not American defence, but denunciation of past pretensions of our own country, reflections on the past administration, and exultation and a loud claim of merit for the administration now in power. Sir, I would forgive mistakes; I would pardon the want of information; I would pardon almost any thing, where I saw true patriotism and sound American feeling; but I cannot forgive the sacrifice of this feeling to mere party. I cannot concur in sending abroad a public agent, who has not conceptions so large and liberal as to feel, that, in the presence of foreign courts, amidst the monarchies of Europe, he is to stand up for his country, and his whole country; that no jot nor tittle of her honor is to suffer in his hands; that he is not to allow others to reproach either his government or his country,

and far less is he himself to reproach either; that he is to have no objects in his eye but American objects, and no heart in his bosom but an American heart; and that he is to forget self, and forget party, to forget every sinister and narrow feeling, in his proud and lofty attachment to the republic whose commission he bears.

Mr. President, I have discharged an exceedingly unpleasant duty, the most unpleasant of my public life. But I have looked upon it *as a duty*, and it was not to be shunned. And, Sir, however unimportant may be the opinion of so humble an individual as myself, I now only wish that I might be heard by every independent freeman in the United States, by the British minister and the British king, and by every minister and every crowned head in Europe, while, standing here in my place, I pronounce my rebuke, as solemnly and as decisively as I can, upon this first instance in which an American minister has been sent abroad as the representative of his party, and not as the representative of his country.

FURTHER REMARKS ON THE SAME SUBJECT.*

In reply to some remarks of Mr. Forsyth, Mr. Webster spoke as follows: —

It is, in my judgment, a great mistake to suppose that what is now called the American "pretension" originated with Mr. Adams, either as President or Secretary of State. By the way, it is singular enough that the American side of this question is called, in the instructions before us, a pretension too long persisted in; while the British side of it is called a right, too long and too tenaciously resisted by us. This courteous mode of speaking of the claims of a foreign government, and this reproachful mode of speaking of the claims of our own, is certainly somewhat novel in diplomacy. But whether it be called, respectfully, a claim, or, reproachfully, a pretension, it did not originate with Mr. Adams. It had a much earlier origin. This "preten-

* In Secret Session of the Senate, on the 26th of January, 1832.

sion," now abandoned with so much scorn, or this claim, said, reproachfully, to have been first set up by the late administration, originated with George Washington. He put his own hand to it. He insisted on it; and he would not treat with England on the subject of the colonial trade without considering it.

In his instructions to Mr. Morris, under his own hand, in October, 1789, President Washington says: —

"Let it be strongly impressed on your mind, that the privilege of carrying our productions in our vessels to their islands, and bringing in return the productions of those islands to our own ports and markets, is regarded here as of the highest importance; and you will be careful not to countenance any idea of our dispensing with it in a treaty. Ascertain, if possible, their views on this subject; for it would not be expedient to commence negotiations without previously having good reasons to expect a satisfactory termination of them."

Observe, Sir, that President Washington, in these instructions, is not speaking of the empty and futile right of sending our own vessels without cargoes to the British West Indies; but he is speaking of the substantial right of carrying our own products to the islands, for sale and for consumption there. And whether these products were shut out by a positive act of Parliament, or by a tariff of duties absolutely and necessarily prohibitory, could make no difference. The object was to provide by treaty, if it could be done, that our products should find their way, effectually and profitably, into the markets of the British West Indies. This was General Washington's object. This was the "pretension" which *he* set up.

It is well known, Sir, that no satisfactory arrangement was made in General Washington's time respecting our trade with the British West Indies. But the breaking out of the French Revolution, and the wars which it occasioned, were causes which of themselves opened the ports of the West Indies. During the long continuance of those wars, our vessels, with cargoes of our own products, found their way into the British West India Islands, under a practical relaxation of the British colonial system. While this condition of things lasted, we did very well without a particular treaty. But on the general restoration of peace, in 1815, Great Britain returned to her former system; then the islands were shut against us; and then it

became necessary to treat on the subject, and our ministers were, successively, instructed to treat, from that time forward. And, Sir, I undertake to say, that neither Mr. Madison, who was then President, nor his successor, Mr. Monroe, gave any authority or permission to any American minister to abandon this pretension, or even to waive it or postpone it, and make a treaty without providing for it. No such thing. On the contrary, it will appear, I think, if we look through papers which have been sent to the Senate, that, under Mr. Madison's administration, our minister in England was fully instructed on this subject, and expected to press it. As to Mr. Monroe, I have means of being informed, in a manner not liable to mistake, that he was on this subject always immovable. He would not negotiate without treating on this branch of the trade; nor did I ever understand, that, in regard to this matter, there was any difference of opinion whatever among the gentlemen who composed Mr. Monroe's cabinet. Mr. Adams, as Secretary of State, wrote the despatches and the instructions; but the policy was the policy of the whole administration, as far as I ever understood. Certain it is, it was the settled and determined policy of Mr. Monroe himself. Indeed, Sir, so far is it from being true that this *pretension* originated with Mr. Adams, that it was in his administration that, for the first time, permission was given, under very peculiar circumstances, and with instructions, to negotiate a treaty, waiving this part of the question. This has been already alluded to, and fully explained, by the honorable member from Kentucky.

So, then, Sir, this *pretension*, asserted in the instructions to have been first set up by the late administration, is shown to have had President Washington for its author, and to have received the countenance of every President who had occasion to act on the subject, from 1789 down to the time of the present administration.

But this is not all. Congress itself has sanctioned the same "pretension." The act of the 1st of March, 1823, makes it an express condition upon which, and upon which alone, our ports shall be opened to British vessels and cargoes from the West Indies on paying the same duties as our vessels and cargoes, *that our products shall be admitted into those islands without paying any other or higher duties than shall be paid on similar productions*

coming from elsewhere. All this will be seen by reference to the third section of that act. Now remember, Sir, that this act of Congress passed in March, 1823, two years before the commencement of Mr. Adams's administration. The act originated in the Senate. The honorable Senator from Maryland,* who has spoken on this subject to-day, was then a member of the Senate, and took part in the discussion of this very bill; and he supported it, and voted for it. It passed both houses, without material opposition in either. How is it possible, after referring to this law of 1823, to find any apology for the assertion contained in these instructions, that this claim is a pretension first set up by Mr. Adams's administration? How is it possible that this law could have been overlooked or not remembered? In short, Sir, with any tolerable acquaintance with the history of the negotiations of the United States or their legislation, how are we to account for it that such an assertion as these instructions contain should have found its way into them?

But the honorable member from Georgia asks why we lay all this to the charge of the Secretary, and not to the charge of the President. The answer is, the President's conduct is not before us. We are not, and cannot become, his accusers, even if we thought there were any thing in his conduct which gave cause for accusation. But the Secretary *is* before us. Not brought before us by any act of ours, but placed before us by the President's nomination. On that nomination we cannot decline to act. We must either confirm or reject it. As to the notion that the Secretary of State was but the instrument of the President, and so not responsible for these instructions, I reject at once all such defence, excuse, or apology, or whatever else it may be called. If there be any thing in a public despatch derogatory to the honor of the country, as I think there is in this, it is enough for me that I see whose hand is to it. If it be said, that the signer was only an instrument in the hands of others, I reply, that I cannot concur in conferring a high public diplomatic trust on any one who has consented, under any circumstances, to be an instrument in such a case.

The honorable member from Georgia asks, also, why we have slept on this subject, and why, at this late day, we bring forward

* Mr. Smith.

complaints. Sir, nobody has slept upon it. Since these instructions have been made public, there has been no previous opportunity to discuss them. The honorable member will recollect, that the whole arrangement with England was made and completed before these instructions saw the light. The President opened the trade by his proclamation, in October, 1830; but these instructions were not publicly sent to Congress till long afterwards, that is, till January, 1831. They were not then sent with any view that either house should act upon the subject, for the whole business was already settled. For one, I never saw the instructions, nor heard them read, till January, 1831; nor did I ever hear them spoken of as containing these obnoxious passages. This, then, is the first opportunity for considering these instructions.

That they have been subjects of complaint out doors since they were made public, and of much severe animadversion, is certainly true. But, until now, there never has been an opportunity naturally calling for their discussion here. The honorable gentleman may be assured, that, if such occasion had presented itself, it would have been embraced.

I entirely forbear, Mr. President, from going into the merits of the late arrangement with England, as a measure of commercial policy. Another time will come, I trust, more suitable for that discussion. For the present, I confine myself strictly to such parts of the instructions as I think plainly objectionable, whatever may be the character of the agreement between us and England, as matter of policy. I repeat, Sir, that I place the justification of my vote on the *party* tone and *party* character of these instructions. Let us ask, If such considerations as these are to be addressed to a foreign government, what is that foreign government to expect in return? The ministers of foreign courts will not bestow gratuitous favors, nor even gratuitous smiles, on American parties. What, then, I repeat, is to be the return? What is party to do for that foreign government which has done, is expected to do, or is asked to do, something for party? What is to be the consideration paid for this foreign favor? Sir, must not every man see, that any mixture of such causes or motives of action in our foreign intercourse is as full of danger as it is of dishonor?

I will not pursue the subject. I am anxious only to make

my own ground fully and clearly understood; and willingly leave every other gentleman to his own opinions. And I cheerfully submit my own vote to the opinions of the country. I willingly leave it to the people of the United States to say, whether I am acting a factious and unworthy part, or the part of a true-hearted American, in withholding my approbation from the nomination of a gentleman as minister to England, who has already, as it appears to me, instructed his predecessor at the same court to carry party considerations, to argue party merits, and solicit party favors, at the foot of the British throne.

Note. — The circumstance did not occur to Mr. Webster's recollection at the moment he was speaking, but the truth is, that Mr. Van Buren was himself a member of the Senate at the very time of the passing of the law of 1823, and Mr. McLane was at the same time a member of the House of Representatives. So that Mr. Van Buren did himself certainly concur in "setting up this pretension," two years before Mr. Adams became President.

NAVAL ACADEMY

Apportionment of Representation*

THE object of the following report is to set forth the unjust operation of the rule by which the apportionment of Representatives had hitherto been made among the States, and was proposed to be made under the fifth census. Notwithstanding the manifest unequal operation of the rule, and the cogency of the arguments against it contained in this report, Congress could not be brought on this occasion, nor on that of the next decennial apportionment, to apply the proper remedy.

In making provision for the apportionment under the census of 1850, the principles of this report prevailed. By the act of the 23d of May, 1850, it is provided that the number of the new House shall be 233. The entire representative population of the United States is to be divided by this sum; and the quotient is the ratio of apportionment among the several States. Their representative population is in turn to be divided by this ratio; and the loss of members arising from the residuary numbers is made up by assigning as many additional members as are necessary for that purpose to the States having the largest fractional remainders. It was a further very happy provision of the law of the 23d of May, 1850, that this apportionment should be made by the Secretary of the Interior, after the returns of the census should have been made, and without the necessity of any further action on the part of Congress.

THE Select Committee, to whom was referred, on the 27th of March, the bill from the House of Representatives, entitled, "An Act for the Apportionment of Representatives among the several States according to the Fifth Census," have had the subject under consideration, and now ask leave to report:

THIS bill, like all laws on the same subject, must be regarded as of an interesting and delicate nature. It respects the distri-

* A Report on the Subject of the Apportionment of Representation, in the House of Representatives of the United States, made in the Senate, on the 5th of April, 1832.

bution of political power among the States of the Union. It is to determine the number of voices which, for ten years to come, each State is to possess in the popular branch of the legislature. In the opinion of the committee, there can be few or no questions which it is more desirable to settle on just, fair, and satisfactory principles, than this; and, availing themselves of the benefit of the discussion which the bill has already undergone in the Senate, they have given to it a renewed and anxious consideration. The result is, that, in their opinion, the bill ought to be amended. Seeing the difficulties which belong to the whole subject, they are fully convinced that the bill has been framed and passed in the other House with the sincerest desire to overcome these difficulties, and to enact a law which should do as much justice as possible to all the States. But the committee are constrained to say, that this object appears to them not to have been attained. The unequal operation of the bill on some of the States, should it become a law, seems to the committee most manifest; and they cannot but express a doubt whether its actual apportionment of the representative power among the several States can be considered as conformable to the spirit of the Constitution.

The bill provides, that from and after the 3d of March, 1833, the House of Representatives shall be composed of members elected agreeably to a ratio of one Representative for every forty-seven thousand and seven hundred persons in each State, computed according to the rule prescribed by the Constitution. The addition of the seven hundred to the forty-seven thousand, in the composition of this ratio, produces no effect whatever in regard to the constitution of the House. It neither adds to nor takes from the number of members assigned to any State. Its only effect is a reduction of the apparent amount of the fractions, as they are usually called, or residuary numbers, after the application of the ratio. For all other purposes, the result is precisely the same as if the ratio had been forty-seven thousand.

As it seems generally admitted that inequalities do exist in this bill, and that injurious consequences will arise from its operation, which it would be desirable to avert, if any proper means of averting them, without producing others equally injurious, could be found, the committee do not think it necessary

to go into a full and particular statement of these consequences. They will content themselves with presenting a few examples only of these results, and such as they find it most difficult to reconcile with justice and the spirit of the Constitution.

In exhibiting these examples, the committee must necessarily speak of particular States; but it is hardly necessary to say, that they speak of them as examples only, and with the most perfect respect, not only for the States themselves, but for all those who represent them here.

Although the bill does not commence by fixing the whole number of the proposed House of Representatives, yet the process adopted by it brings out the number of two hundred and forty members. Of these two hundred and forty members, forty are assigned to the State of New York; that is to say, precisely one sixth part of the whole. This assignment would seem to require that New York should contain one sixth part of the whole population of the United States, and should be bound to pay one sixth part of all direct taxes. Yet neither of these is the case. The whole representative population of the United States is 11,929,005; that of New York is 1,918,623, which is less than one sixth of the whole, by nearly 70,000. Of a direct tax of two hundred and forty thousand dollars, New York would pay only $38.59.

But if, instead of comparing the numbers assigned to New York with the whole numbers of the House, we compare her with other States, the inequality is still more evident and striking. To the State of Vermont the bill assigns five members. It gives, therefore, eight times as many Representatives to New York as to Vermont; but the population of New York is not equal to eight times the population of Vermont, by more than three hundred thousand. Vermont has five members only for 280,657 persons. If the same proportion were to be applied to New York, it would reduce the number of her members from forty to *thirty-four*, making a difference more than equal to the whole representation of Vermont, and more than sufficient to overcome her whole power in the House of Representatives.

A disproportion almost equally striking is manifested, if we compare New York with Alabama. The population of Alabama is 262,203; for this she is allowed five members. The rule of proportion which gives to her but five members for her number,

would give to New York but thirty-six for her number. Yet New York receives forty. As compared with Alabama, then, New York has an excess of representation equal to four fifths of the whole representation of Alabama; and this excess itself will give her, of course, as much weight in the House as the whole delegation of Alabama, within a single vote. Can it be said, then, that Representatives are apportioned to these States according to their respective numbers?

The ratio assumed by the bill, it will be perceived, leaves large fractions, so called, or residuary numbers, in several of the small States, to the manifest loss of a great part of their just proportion of representative power. Such is the operation of the ratio, in this respect, that New York, with a population less than that of New England by thirty or thirty-five thousand, has yet two more members than all the New England States; and there are seven States in the Union, represented, according to the bill, by one hundred and twenty-three members, being a clear majority of the whole House, whose aggregate fractions, all together, amount only to fifty-three thousand; while Vermont and New Jersey, having together but eleven members, have a joint fraction of seventy-five thousand.

Pennsylvania, by the bill, will have, as it happens, just as many members as Vermont, New Hampshire, Massachusetts, and New Jersey; but her population is not equal to theirs by a hundred and thirty thousand; and the reason of this advantage, derived to her from the provision of the bill, is, that her fraction, or residuum, is twelve thousand only, while theirs is a hundred and forty-four thousand.

But the subject is capable of being presented in a more exact and mathematical form. The House is to consist of two hundred and forty members. Now, the precise portion of power, out of the whole mass presented by the number of two hundred and forty, to which New York would be entitled according to her population, is 38.59; that is to say, she would be entitled to thirty-eight members, and would have a residuum or fraction; and even if a member were given her for that fraction, she would still have but thirty-nine. But the bill gives her forty.

These are a part, and but a part, of those results, produced by the bill in its present form, which the committee cannot bring

themselves to approve. While it is not to be denied, that, under any rule of apportionment, some degree of relative inequality must always exist, the committee cannot believe that the Senate will sanction inequality and injustice to the extent in which they exist in this bill, if it can be avoided. But, recollecting the opinions which had been expressed in the discussions of the Senate, the committee have diligently sought to learn whether there was not some other number which might be taken for a ratio, the application of which would produce more justice and equality. In this pursuit, the committee have not been successful. There are, it is true, other numbers, the adoption of which would relieve many of the States which suffer under the present; but this relief would be obtained only by shifting the pressure to other States, thus creating new grounds of complaint in other quarters. The number 44,000 has been generally spoken of as the most acceptable substitute for 47,700; but should this be adopted, great relative inequality would fall on several States, and, among them, on some of the new and growing States, whose relative disproportion, thus already great, would be constantly increasing.

The committee, therefore, are of opinion that the bill should be altered in the mode of apportionment. They think that the process which begins by assuming a ratio should be abandoned, and that the bill ought to be framed on the principle of the amendment which has been the main subject of discussion before the Senate. The fairness of the principle of this amendment, and the general equity of its results, compared with those which flow from the other process, seem plain and undeniable. The main question has been, whether the principle itself be constitutional, and this question the committee proceed to examine, respectfully asking of those who have doubted its constitutional propriety to consider the question of so much importance as to justify a second reflection.

The words of the Constitution are, —

"Representatives and direct taxes shall be apportioned among the several States, which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians, three fifths of all other persons. The actual enumeration shall be made within three years after the first

meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative."

There would seem to be little difficulty in understanding these provisions. The terms used are designed, doubtless, to be received in no peculiar or technical sense, but according to their common and popular acceptation. To *apportion* is to distribute by right measure, to set off in just parts, to assign in due and proper proportion. These clauses of the Constitution respect not only the portions of power, but the portions of the public burden, also, which should fall to the several States; and the same language is applied to both. Representatives are to be apportioned among the States according to their respective numbers, and direct taxes are to be apportioned by the same rule. The end aimed at is, that representation and taxation should go hand in hand; that each State should be represented in the same extent to which it is made subject to the public charges by direct taxation. But between the apportionment of Representatives and the apportionment of taxes, there necessarily exists one essential difference. Representation founded on numbers must have some limit, and being, from its nature, a thing not capable of indefinite subdivision, it cannot be made precisely equal. A tax, indeed, cannot always, or often, be apportioned with perfect exactness; as in other matters of account, there will be fractional parts of the smallest coins, and the smallest denomination of money of account; yet, by the usual subdivisions of the coin, and of the denominations of money, the apportionment of taxes is capable of being made so exact, that the inequality becomes minute and invisible. But representation cannot be thus divided. Of representation, there can be nothing less than one Representative; nor, by our Constitution, more Representatives than one for every thirty thousand. It is quite obvious, therefore, that the apportionment of representative power can never be precise and perfect. There must always exist some degree of inequality. Those who framed and those who adopted the Constitution were, of course, fully acquainted with this necessary operation of the provision. In the Senate, the States are entitled to a fixed number of Senators; and therefore, in regard to their representation in that body, there is no consequential

or incidental inequality. But, being represented in the House of Representatives according to their respective numbers of people, it is unavoidable that, in assigning to each State its number of members, the exact proportion of each, out of a given number, cannot always or often be expressed in whole numbers; that is to say, it will not often be found that there belongs to a State exactly one tenth, or one twentieth, or one thirtieth of the whole House; and therefore no number of Representatives will exactly correspond with the right of such State, or the precise share of representation which belongs to it, according to its population.

The Constitution, therefore, must be understood, not as enjoining an absolute relative equality, because that would be demanding an impossibility, but as requiring of Congress to make the apportionment of Representatives among the several States according to their respective numbers, *as near as may be.* That which cannot be done perfectly must be done in a manner as near perfection as can be. If exactness cannot, from the nature of things, be attained, then the nearest practicable approach to exactness ought to be made.

Congress is not absolved from all rule merely because the rule of perfect justice cannot be applied. In such a case, approximation becomes a rule; it takes the place of that other rule, which would be preferable, but which is found inapplicable, and becomes itself an obligation of binding force. The nearest approximation to exact truth or exact right, when that exact truth or that exact right cannot itself be reached, prevails in other cases, not as matter of discretion, but as an intelligible and definite rule, dictated by justice and conforming to the common sense of mankind; a rule of no less binding force in cases to which it is applicable, and no more to be departed from, than any other rule or obligation.

The committee understand the Constitution as they would have understood it if it had said, in so many words, that Representatives should be apportioned among the States according to their respective numbers, *as near as may be.* If this be not its true meaning, then it has either given, on this most delicate and important subject, a rule which is always impracticable, or else it has given no rule at all; because, if the rule be that Representatives shall be apportioned *exactly* according to numbers, it is

impracticable in every case; and if, for this reason, that cannot be the rule, then there is no rule whatever, unless the rule be that they shall be apportioned *as near as may be.*

This construction, indeed, which the committee adopt, has not, to their knowledge, been denied; and they proceed in the discussion of the question before the Senate, taking for granted that such is the true and undeniable meaning of the Constitution.

The next thing to be observed is, that the Constitution prescribes no particular process by which this apportionment is to be wrought out. It has plainly described the end to be accomplished, namely, the nearest approach to relative equality of representation among the States; and whatever accomplishes this end, and nothing else, is the true process. In truth, if, without any process whatever, whether elaborate or easy, Congress could perceive the exact proportion of representative power rightfully belonging to each State, it would perfectly fulfil its duty by conferring that portion on each, without reference to any process whatever. It would be enough that the proper end had been attained. And it is to be remarked, further, that, whether this end be attained best by one process or by another, becomes, when each process has been carried through, not matter of opinion, but matter of mathematical certainty. If the whole population of the United States, the population of each State, and the proposed number of the House of Representatives, be all given, then, between two bills apportioning the members among the several States, it can be told with absolute certainty which bill assigns to any and every State the number nearest to the exact proportion of that State; in other words, which of the two bills, if either, apportions the Representatives according to the numbers in the States, respectively, *as near as may be.* If, therefore, a particular process of apportionment be adopted, and objection be made to the injustice or inequality of its result, it is surely no answer to such objection to say, that the inequality necessarily results from the nature of the process. Before such answer could avail, it would be necessary to show, either that the Constitution prescribes such process, and makes it necessary, or that there is no other mode of proceeding which would produce less inequality and less injustice. If inequality, which might have otherwise been avoided, be produced by a given

process, then that process is a wrong one. It is not suited to the case, and should be rejected.

Nor do the committee perceive how it can be matter of constitutional propriety or validity, or in any way a constitutional question, whether the process which may be applied to the case be simple or compound, one process or many processes; since, in the end, it may always be seen whether the result be that which has been aimed at, namely, the nearest practicable approach to precise justice and relative equality. The committee, indeed, are of opinion, in this case, that the simplest and most obvious way of proceeding is also the true and constitutional way. To them it appears, that, in carrying into effect this part of the Constitution, the first thing naturally to be done is to decide on the whole number of which the House is to be composed; as when, under the same clause of the Constitution, a tax is to be apportioned among the States, the amount of the whole tax is, in the first place, to be settled.

When the whole number of the proposed House is thus ascertained and fixed, it becomes the entire representative power of all the people in the Union. It is then a very simple matter to ascertain how much of this representative power each State is entitled to by its numbers. If, for example, the House is to contain two hundred and forty members, then the number 240 expresses the representative power of all the States; and a plain calculation readily shows how much of this power belongs to each State. This portion, it is true, will not always, nor often, be expressed in whole numbers, but it may always be precisely exhibited by a decimal form of expression. If the portion of any State be seldom or never one exact tenth, one exact fifteenth, or one exact twentieth, it will still always be capable of precise decimal expression, as one tenth and two hundredths, one twelfth and four hundredths, one fifteenth and six hundredths, and so on. And the exact portion of the State, being thus decimally expressed, will always show, to mathematical certainty, what integral number comes nearest to such exact portion. For example, in a House consisting of 240 members, the exact mathematical proportion to which her numbers entitle the State of New York is 38.59; it is certain, therefore, that 39 is the integral or whole number nearest to her exact proportion of the representative power of the Union. Why, then, should she not

have thirty-nine? and why should she have forty? She is not quite entitled to thirty-nine; that number is something more than her right. But allowing her thirty-nine, from the necessity of giving her whole numbers, and because that is the nearest whole number, is not the Constitution fully obeyed when she has received the thirty-ninth member? Is not her proper number of Representatives then apportioned to her, as near as may be? And is not the Constitution disregarded when the bill goes further, and gives her a fortieth member? For what is such a fortieth member given? Not for her absolute numbers, for her absolute numbers do not entitle her to thirty-nine. Not for the sake of apportioning her members to her numbers as near as may be because thirty-nine is a nearer apportionment of members to numbers than forty. But it is given, say the advocates of the bill, because the *process* which has been adopted gives it. The answer is, No such process is enjoined by the Constitution.

The case of New York may be compared, or contrasted, with that of Missouri. The exact proportion of Missouri, in a general representation of 240, is two and six tenths; that is to say, it comes nearer to three members than to two, yet it is confined to two. But why is not Missouri entitled to that number of Representatives which comes nearest to her exact proportion? Is the Constitution fulfilled as to her, while that number is withheld, and while, at the same time, in another State, not only is that nearest number given, but an additional member given also? Is it an answer with which the people of Missouri ought to be satisfied, when it is said that this obvious injustice is the necessary result of the process adopted by the bill? May they not say with propriety, that, since three is the nearest whole number to their exact right, to that number they are entitled, and the process which deprives them of it must be a wrong process? A similar comparison might be made between New York and Vermont. The exact proportion to which Vermont is entitled, in a representation of 240, is 5.646. Her nearest whole number, therefore, would be six. Now two things are undeniably true; first, that to take away the fortieth member from New York would bring her representation nearer to her exact proportion than it stands by leaving her that fortieth member; second, that giving the member thus taken from New York to Vermont would bring her representation nearer to her exact

right than it is by the bill. And both these propositions are equally true of a transfer to Delaware of the twenty-eighth member assigned by the bill to Pennsylvania, and to Missouri of the thirteenth member assigned to Kentucky. In other words, Vermont has, by her numbers, more right to six members than New York has to forty; Delaware, by her numbers, has more right to two members than Pennsylvania has to twenty-eight; and Missouri, by her numbers, has more right to three members than Kentucky has to thirteen. Without disturbing the proposed number of the House, the mere changing of these three members from and to the six States, respectively, would bring the representation of the whole six nearer to their due proportion, according to their respective numbers, than the bill in its present form makes it. In the face of this indisputable truth, how can it be said that the bill apportions members of Congress among those States according to their respective numbers, *as near as may be?*

The principle on which the proposed amendment is founded is an effectual corrective for these and all other equally great inequalities. It may be applied at all times, and in all cases, and its result will always be the nearest approach to perfect justice. It is equally simple and impartial. As a rule of apportionment, it is little other than a transcript of the words of the Constitution, and its results are mathematically certain. The Constitution, as the committee understand it, says, Representatives shall be apportioned among the States according to their respective numbers of people, as near as may be. The rule adopted by the committee says, out of the whole number of the House, that number shall be apportioned to each State which comes nearest to its exact right according to its number of people.

Where is the repugnancy between the Constitution and the rule? The arguments against the rule seem to assume, that there is a necessity of instituting some process, adopting some number as the ratio, or as that number of people which each member shall be understood to represent. But the committee see no occasion for any other process whatever, than simply the ascertainment of that *quantum*, out of the whole mass of the representative power, which each State may claim.

But it is said that, although a State may receive a number of Representatives which is something less than its exact pro-

portion of representation, yet that it can in no case constitutionally receive more. How is this proposition proved? How is it shown that the Constitution is less perfectly fulfilled by allowing a State a small excess, than by subjecting her to a large deficiency? What the Constitution requires is the nearest practicable approach to precise justice. The rule is approximation; and we ought to approach, therefore, on whichever side we can approach nearest.

But there is a still more conclusive answer to be given to this suggestion. The whole number of Representatives of which the House is to be composed is, of necessity, limited. This number, whatever it is, is that which is to be apportioned, and nothing else can be apportioned. This is the whole sum to be distributed. If, therefore, in making the apportionment, some States receive less than their just share, it must necessarily follow that some other States have received more than their just share. If there be one State in the Union with less than its right, some other State has more than its right; so that the argument, whatever be its force, applies to the bill in its present form, as strongly as it can ever apply to any bill.

But the objection most usually urged against the principle of the proposed amendment is, that it provides for the representation of fractions. Let this objection be examined and considered. Let it be ascertained, in the first place, what these fractions, or fractional numbers, or residuary numbers, really are, which it is said will be represented, should the amendment prevail.

A fraction is the broken part of some integral number. It is, therefore, a relative or derivative idea. It implies the previous existence of some fixed number, of which it is but a part or remainder. If there be no necessity for fixing or establishing such previous number, then the fraction resulting from it is itself not matter of necessity, but matter of choice or accident. Now, the argument which considers the plan proposed in the amendment as a representation of fractions, and therefore unconstitutional, assumes as its basis, that, according to the Constitution, every member of the House of Representatives represents, or ought to represent, the same, or nearly the same, number of constituents; that this number is to be regarded as an integer; and any thing less than this is therefore called a fraction, or a residu-

um, and cannot be entitled to a Representative. But nothing of this is prescribed by the Constitution of the United States. That Constitution contemplates no integer, or any common number for the constituents of a member of the House of Representatives. It goes not at all into these subdivisions of the population of a State. It provides for the apportionment of Representatives *among the several States*, according to their respective numbers, and stops there. It makes no provision for the representation of districts of States, or for the representation of any portion of the people of a State less than the whole. It says nothing of ratios or of constituent numbers. All these things it leaves to State legislation. The right which each State possesses to its own due portion of the representative power is a State right, strictly. It belongs to the State, as a State; and it is to be used and exercised as the State may see fit, subject only to the constitutional qualifications of electors. In fact, the States do make, and always have made, different provisions for the exercise of this power. In some, a single member is chosen for a certain defined district; in others, two or three members are chosen for the same district; and in some, again, as New Hampshire, Rhode Island, Connecticut, New Jersey, and Georgia, the entire representation of the State is a joint and undivided representation. In each of these last-mentioned States, every member of the House of Representatives has for his constituents all the people of the State; and all the people of those States are consequently represented in that branch of Congress.

If the bill before the Senate should pass into a law, in its present form, whatever injustice it might do to any of those States, it would not be correct to say of them, nevertheless, that any portion of their people was unrepresented. The well-founded objection would be, as to some of them at least, that they were not adequately, competently, fairly represented; that they had not as many voices and as many votes in the House of Representatives as they were entitled to. This would be the objection. There would be no unrepresented fraction; but the State, as a State, as a whole, would be deprived of some part of its just rights.

On the other hand, if the bill should pass as it is now proposed to be amended, there would be no representation of frac-

tions in any State; for a fraction supposes a division and a remainder. All that could justly be said would be, that some of these States, as States, possessed a portion of legislative power a little larger than their exact right; as it must be admitted, that, should the bill pass unamended, they would possess of that power much less than their exact right. The same remarks are substantially true, if applied to those States which adopt the district system, as most of them do. In Missouri, for example, there will be no fraction unrepresented, should the bill become a law in its present form; nor any member for a fraction, should the amendment prevail. Because the mode of apportionment which is nearest to its exact right applies no assumed ratios, makes no subdivisions, and, of course, produces no fractions. In the one case, or in the other, the State, as a State, will have something more, or something less, than its exact proportion of representative power; but she will part out this power among her own people, in either case, in such mode as she may choose, or exercise it altogether as an entire representation of the people of the State.

Whether the subdivision of the representative power within any State, if there be a subdivision, be equal or unequal, or fairly or unfairly made, Congress cannot know, and has no authority to inquire. It is enough that the State presents her own representation on the floor of Congress in the mode she chooses to present it. If a State were to give to one portion of her territory a Representative for every twenty-five thousand persons, and to the rest a Representative only for every fifty thousand, it would be an act of unjust legislation, doubtless; but it would be wholly beyond redress by any power in Congress, because the Constitution has left all this to the State itself.

These considerations, it is thought, may show that the Constitution has not, by any implication or necessary construction, enjoined that which it certainly has not ordained in terms, namely, that every member of the House should be supposed to represent the same number of constituents; and therefore, that the assumption of a ratio, as representing the common number of constituents, is not called for by the Constitution. All that Congress is at liberty to do, as it would seem, is to divide the whole representative power of the Union into twenty-four parts, assigning one part to each State, as near as practicable accord-

ing to its right, and leaving all subsequent arrangement, and all subdivisions, to the State itself.

If the view thus taken of the rights of the States and the duties of Congress be the correct view, then the plan proposed in the amendment is in no just sense a representation of fractions. But suppose it was otherwise; suppose a direct provision were made for allowing a Representative to every State in whose population, it being first divided by a common ratio, there should be found a fraction exceeding half the amount of that ratio, what constitutional objection could be fairly urged against such a provision? Let it always be remembered, that the case here supposed provides only for a fraction exceeding the moiety of the ratio; for the committee admit at once that the representation of fractions less than a moiety is unconstitutional; because, should a member be allowed to a State for such a fraction, it would be certain that her representation would not be so near her exact right as it was before. But the allowance of a member for a major fraction is a direct approximation towards justice and equality. There appears to the committee to be nothing, either in the letter or the spirit of the Constitution, opposed to such a mode of apportionment. On the contrary, it seems entirely consistent with the very object which the Constitution contemplated, and well calculated to accomplish it. The argument commonly urged against it is, that it is necessary to apply some one common divisor, and to abide by its results.

If by this it be meant that there must be some common rule, or common measure, applicable, and applied impartially, to all the States, it is quite true. But if that which is intended be, that the population of each State must be divided by a fixed ratio, and all resulting fractions, great or small, disregarded, this is but to take for granted the very thing in controversy. The question is, whether it be unconstitutional to make approximation to equality by allowing Representatives for major fractions. The affirmative of this question is, indeed, denied, but it is not disproved, by saying that we must abide by the operation of division by an assumed ratio, and disregard fractions. The question still remains as it was before, and it is still to be shown what there is in the Constitution which rejects approximation as the rule of apportionment.

But suppose it to be necessary to find a divisor, and to abide

its results. What is a divisor? Not necessarily a simple number. It may be composed of a whole number and a fraction; it may itself be the result of a previous process; it may be any thing, in short, which produces accurate and uniform division. Whatever does this is a common rule, a common standard, or, if the word be important, a common divisor. The committee refer, on this part of the case, to some observations by Professor Dean, with a table, both of which accompany this report.

As it is not improbable that opinion has been a good deal influenced on this subject by what took place on the passing of the first act making an apportionment of Representatives among the States, the committee have examined and considered that precedent. If it be in point to the present case, it is certainly entitled to very great weight; but if it be of questionable application, the text of the Constitution, even if it were doubtful, cannot be explained by a doubtful commentary. In the opinion of the committee, it is only necessary that what was said on this occasion should be understood in connection with the subject-matter then under consideration; and in order to see what that subject-matter really was, the committee think it necessary shortly to state the case.

The two houses of Congress passed a bill, after the first enumeration of the people, providing for a House of Representatives which should consist of 120 members. The bill expressed no rule or principle by which these members were assigned to the several States. It merely said that New Hampshire should have five members, Massachusetts ten, and so on; going through all the States, and assigning the whole number of one hundred and twenty. Now, by the census then recently taken, it appeared that the whole representative population of the United States was 3,615,920; and it was evidently the wish of Congress to make the House as numerous as the Constitution would allow. But the Constitution provides that there shall not be more than one member for every thirty thousand persons.

This prohibition was, of course, to be obeyed; but did the Constitution mean that no State should have more than one member for every thirty thousand persons? Or did it only mean that the whole House, as compared with the whole population of the United States, should not contain more than one

member for every thirty thousand persons? If this last were the true construction, then the bill, in that particular, was right; if the first were the true construction, then it was wrong; because so many members could not be assigned to the States, without giving to some of them more members than one for every thirty thousand. In fact, the bill did propose to do this in regard to several States.

President Washington adopted that construction of the Constitution which applied its prohibition to each State individually. He thought that no State could constitutionally receive more than one member for every thirty thousand of her population. On this, therefore, his main objection to the bill was founded. That objection he states in these words: —

"The Constitution has also provided that the number of Representatives shall not exceed one for every thirty thousand; which restriction is, by the context, and by fair and obvious construction, to be applied to the separate and respective numbers of the States; and the bill has allotted to eight of the States more than one for every thirty thousand."

It is now necessary to see what there was further objectionable in this bill. The number of one hundred and twelve members was all that could be divided among the States, without giving to some of them more than one member for thirty thousand inhabitants. Therefore, having allotted these one hundred and twelve, there still remained eight of the one hundred and twenty to be assigned; and these eight the bill assigned to the States having the largest fractions. Some of these fractions were large, and some were small. No regard was paid to fractions over a moiety of the ratio, any more than to fractions under it. There was no rule laid down, stating what fractions should entitle the States to whom they might happen to fall, or in whose population they might happen to be found, to a Representative therefor. The assignment was not made on the principle that each State should have a member for a fraction greater than half the ratio; or that all the States should have a member for a fraction, in all cases where the allowance of such member would bring her representation nearer to its exact proportion than its disallowance. There was no common measure or common rule adopted, but the assignment was matter of arbitrary discretion. A member was allowed to New Hampshire, for ex-

ample, for a fraction of less than one half the ratio; thus placing her representation farther from her exact proportion than it was without such additional member; while a member was refused to Georgia, whose case closely resembled that of New Hampshire, both having what were thought large fractions, but both still under a moiety of the ratio, and distinguished from each other only by a very slight difference of absolute numbers. The committee have already fully expressed their opinion on such a mode of apportionment.

In regard to this character of the bill, President Washington said: "The Constitution has prescribed that Representatives shall be apportioned among the several States according to their respective numbers; and there is no one proportion or divisor, which, applied to the respective numbers of the States, will yield the number and allotment of Representatives proposed by the bill."

This was all undoubtedly true, and was, in the judgment of the committee, a decisive objection against the bill. It is, nevertheless, to be observed, that the other objection completely covered the whole ground. *There could, in that bill, be no allowance for a fraction, great or small;* because Congress had taken for the ratio the lowest number allowed by the Constitution, viz. thirty thousand. Whatever fraction a State might have less than that ratio, no member could be allowed for it. It is scarcely necessary to observe, that no such objection applies to the amendment now proposed. No State, should the amendment prevail, will have a greater number of members than one for every thirty thousand; nor is it likely that the objection will ever again occur. The whole force of the precedent, whatever it be, in its application to the present case, is drawn from the other objection. And what is the true import of that objection? Does it mean any thing more than that the apportionment was not made on a common rule or principle, applicable and applied alike to all the States?

President Washington's words are: "There is no one proportion or divisor, which, applied to the respective numbers of the States, will yield the number and allotment of Representatives proposed by the bill."

If, then, he could have found a common proportion, it would have removed this objection. He required a proportion or

divisor. These words he evidently uses as explanatory of each other. He meant by *divisor*, therefore, no more than by *proportion*. What he sought was some common and equal rule, by which the allotment had been made among the several States; he did not find such common rule; and, on that ground, he thought the bill objectionable.

In the opinion of the committee, no such objection applies to the amendment recommended by them. That amendment gives a rule, plain, simple, just, uniform, and of universal application. The rule has been frequently stated. It may be clearly expressed in either of two ways. Let the rule be, that *the whole number of the proposed House shall be apportioned among the several States according to their respective numbers, giving to each State that number of members which comes nearest to her exact mathematical part or proportion;* or let the rule be, that *the population of each State shall be divided by a common divisor, and, in addition to the number of members resulting from such division, a member shall be allowed to each State whose fraction exceeds a moiety of the divisor.*

Either of these is, it seems to the committee, a fair and just rule, capable of uniform application, and operating with entire impartiality. There is no want of a common proportion, or a common divisor; there is nothing left to arbitrary discretion. If the rule, in either of these forms, be adopted, it can never be doubtful how every member of any proposed number for a House of Representatives ought to be assigned. Nothing will be left in the discretion of Congress; the right of each State will be a mathematical right, easily ascertained, about which there can be neither doubt nor difficulty; and, in the application of the rule, there will be no room for preference, partiality, or injustice. In any case, in all time to come, it will do all that human means can do to allot to every State in the Union its proper and just proportion of representative power. And it is because of this, its capability of constant application, as well as because of its impartiality and justice, that the committee are earnest in recommending its adoption by Congress. If it shall be adopted, they believe it will remove a cause of uneasiness and dissatisfaction, recurring, or liable to recur, with every new census, and place the rights of the States, in this respect, on a fixed basis, of which none can with reason complain. It is true, that there

may be some numbers assumed for the composition of the House of Representatives, to which, if the rule were applied, the result might give a member to the House more than was proposed. But it will be always easy to correct this by altering the proposed number by adding one to it, or taking one from it; so that this can be considered no objection to the rule.

The committee, in conclusion, cannot admit that it is sufficient reason for rejecting this mode of apportionment, that a different process has heretofore prevailed. The truth is, the errors and inequalities of that process were at first not obvious and startling. But they have gone on increasing; they are greatly augmented and accumulated at every new census; and it is of the very nature of the process itself, that its unjust results must grow greater and greater in proportion as the population of the country enlarges. What was objectionable, though tolerable, yesterday, becomes intolerable to-morrow. A change, the committee are persuaded, must come, or the whole just balance and proportion of representative power among the States will be disturbed and broken up.

APPENDIX.

(See p. 117.)

Extract of a Letter from Professor James Dean.

"I cannot express my rule so densely and perspicuously as I could wish; but its meaning is, that each State shall have such a number of Representatives, that the population for each shall be the nearest possible, whether over or under, to [ ]. The number for each State may be ascertained thus: Divide the representative number by the number assumed to fill the blank, disregarding the remainder; the quotient, or the next greater number, will be the number of Representatives. In order to determine which is the proper one, divide the representative number of the State by the two numbers separately, then subtract the least quotient from the assumed number, and the assumed number from the other quotient; and that from which results the least remainder is the number of Representatives for the State."

The foregoing rule is illustrated thus: The population of Maine, for instance, which is 399,435, being divided by 47,700, the ratio assumed in the bill from the House of Representatives, gives a quotient of 8; the population being then divided by 8, the quotient is 49,929; divide by 9, the next higher number, the quotient is 44,381.

The following table exhibits the results in the several States, according to this process.

States.	Federal Population of the United States.	Number of Representatives.	Numbers nearest to 47,700.	Number of Representatives.	Numbers next nearest to 47,700.	Representatives by the bill from the H. R.
Maine,	399,435	8	49,929	9	44,381	8
New Hampshire,	269,326	6	44,887	5	53,805	5
Massachusetts,	610,407	13	46,954	12	50,867	12
Rhode Island,	97,194	2	48,599	3	32,333	2
Connecticut,	297,665	6	49,610	7	42,523	6
Vermont,	280,657	6	48,776	5	56,132	5
New York,	1,918,553	40	47,964	41	46,794	40
New Jersey,	319,922	7	45,970	6	53,320	6
Pennsylvania,	1,348,072	28	46,145	29	46,485	28
Delaware,	75,432	2	37,716	1	75,432	1
Maryland,	405,843	9	45,049	8	50,435	8
Virginia,	1,023,503	21	48,738	22	45,613	21
North Carolina,	639,747	13	49,211	14	45,669	13
South Carolina,	455,025	10	45,502	9	50,558	9
Georgia,	429,811	9	47,746	10	42,981	9
Kentucky,	621,832	13	47,833	14	44,416	13
Tennessee,	625,263	13	48,097	14	44,061	13
Ohio,	935,882	20	46,794	19	49,251	19
Indiana,	343,030	7	49,004	8	42,878	7
Mississippi,	110,358	2	55,129	3	36,766	2
Illinois,	157,147	3	52,362	4	39,283	3
Louisiana,	171,904	4	42,927	3	57,301	3
Missouri,	130,419	3	43,473	2	65,209	2
Alabama,	262,508	6	43,751	5	52,501	5
Totals,	11,928,054	251	....	253	....	240

Note. — The principle laid down by Professor Dean appears to be this: Each State should have that share of representation which bears the nearest possible proportion to the ratio assumed.

Thus Massachusetts, with 610,000 people, if the ratio be 47,700, should have 13 Representatives, because 13 bears the nearest possible proportion to 47,700.

As 13 is to 1, so is 610,000 to 46,923.

As 12 is to 1, so is 610,000 to 50,833.

The first result, or 46,923, is nearer to 47,700, the assumed ratio, than the last result, or 50,833. The number 13, therefore, is more

nearly apportioned to the assumed ratio than 12; and further trial of numbers will prove it to bear the nearest possible proportion to 47,700.

Mr. Dean considers that, the ratio being assumed, the number of the House, and of each State's share of representation, should be apportioned to the ratio. The error of the bill is thus shown; its ratio bears no proportion, either to the whole number of the House, or to the respective quotas of representation of the several States. Its ratio is arbitrary, and its proposed number of this House is arbitrary; that is, the number is not to be found by any process. The necessary consequence is, that no State's share of the House is found by any rule of proportion.

The number of the House being fixed, the ratio should be found by proportion. As 241, e. g.: 1 :: 11,928,054: 49,494.

Thus, for a House of 241, the true ratio is found to be 49,494; then, by the rule of Professor Dean, each State is entitled to that number of Representatives which, when divided into its whole federative population, produces a quotient or ratio approximating nearest to the true ratio, 49,494; in other words, each State is entitled to that number of Representatives which bears the nearest possible proportion to the true ratio.

Bank of the United States*

Mr. President, though I am entirely satisfied with the general view taken by the chairman of the committee,† and with his explanation of the details of the bill, yet there are a few topics upon which I desire to offer some remarks; and if no other gentleman wishes at present to address the Senate, I will avail myself of this opportunity.

A considerable portion of the active part of life has elapsed, since you and I, Mr. President,‡ and three or four other gentlemen, now in the Senate, acted our respective parts in the passage of the bill creating the present Bank of the United States. We have lived to little purpose, as public men, if the experience of this period has not enlightened our judgments, and enabled us to revise our opinions, and to correct any errors into which we may have fallen, if such errors there were, either in regard to the general utility of a national bank, or the details of its constitution. I trust it will not be unbecoming the occasion, if I allude to your own important agency in that transaction. The bill incorporating the bank, and giving it a constitution, proceeded from a committee in the House of Representatives, of which you were chairman, and was conducted through that House under your distinguished lead. Having recently looked back to the proceedings of that day, I must be permitted to say, that I have perused the speech by which the subject was introduced to the consideration of the House, with a revival of the feeling of approbation and pleasure with which I heard it; and I will add, that it would not, perhaps, now be easy to find a better brief

* A Speech delivered in the Senate on the 25th of May, 1832, on the Bill for renewing the Charter of the Bank of the United States.

† Mr. Dallas.

‡ Mr. Calhoun, at that time Vice-President of the United States.

synopsis than that speech contains, of those principles of currency and of banking, which, since they spring from the nature of money and of commerce, must be essentially the same at all times, in all commercial communities. The other gentlemen now with us in the Senate, all of them, I believe, concurred with the chairman of the committee, and voted for the bill. My own vote was against it. This is a matter of little importance; but it is connected with other circumstances, to which I will for a moment advert. The gentlemen with whom I acted on that occasion had no doubts of the constitutional power of Congress to establish a national bank; nor had we any doubts of the general utility of an institution of that kind. We had, indeed, most of us, voted for a bank, at a preceding session. But the object of our regard was not whatever might be called *a bank*. We required that it should be established on certain principles, which alone we deemed safe and useful, made subject to certain fixed liabilities, and so guarded, that it could neither move voluntarily, nor be moved by others, out of its proper sphere of action. The bill, when first introduced, contained features to which we should never have assented, and we accordingly set ourselves to work, with a good deal of zeal, in order to effect sundry amendments. In some of these proposed amendments, the chairman, and those who acted with him, finally concurred. Others they opposed. The result was, that several most important amendments, as I thought, prevailed. But there still remained, in my opinion, objections to the bill, which justified a persevering opposition, till they should be removed.

The first objection was to the magnitude of the capital. In its original form, the bill provided for a capital of thirty-five millions, with a power in Congress to increase it to fifty millions. This latter provision was struck out on the motion of a very intelligent gentleman from New York,* and I believe, Sir, with your assent. But I was of opinion that a capital of thirty-five millions was more than was called for by the circumstances of the country. The capital of the first bank was but ten millions; and it had not been shown to be too small; and there certainly was no good ground to say, that the business or the wants of the country had grown, in the mean time, in the proportion of

* Mr. Cady.

thirty-five to ten. But the state of things has now become changed. A greatly increased population, and a greatly extended commercial activity, especially in the West and Southwest, evidently require an enlarged capacity in the national bank. The capital, therefore, is less disproportionate to the occasion than it was sixteen years ago; and whatever of disproportion may be thought still to exist will be constantly decreasing. The augmentation of banking capital in State institutions is by no means a reason for reducing the capital of this bank. At first view, there might appear to be some reason in such a suggestion; but I think further reflection on the duties expected to be performed by the bank, in relation to the general currency of the country, will show that suggestion not to be well founded. On the whole, I am disposed to continue the capital as it is.

There was another objection. The bill had divided the stock into shares of one hundred dollars each, not of four hundred dollars each, as in the first bank; and it had established such a scale of voting by the stockholders, as showed it to be quite practicable for a minority in interest to control all elections, and to seize on the entire direction of the bank. It was on this very ground, and under the apprehension of this very evil, that the last attempt to amend the bill, made by me, proceeded. That attempt was a motion to diminish the number of shares, by raising the amount of each from one hundred dollars to four hundred.

There was yet one other provision of the bill, which was regarded as unnecessary and objectionable. That was, the power reserved to the government of appointing five of the directors. We had no experience of our own of the effect of such government interference in the direction of the bank; and in other countries it had been found that such connection between government and banking institutions produced nothing but evil. The credit of banks has generally been very much in proportion to their independence of government control. While acting on true commercial principles, they are useful both to government and people; but the history of the principal moneyed institutions of Europe has demonstrated, that their efficiency and stability consist very much in their freedom from all subjection to State interests and State necessities. The real safety to the

public lies in the restraints and liabilities imposed by law, and in the interest which the proprietors themselves have in a judicious management of the affairs of the corporation. I will only say, on this part of the subject, that it is unquestionably true, that the successful career of this institution commenced, when its stock, leaving the hands of speculation, came to be owned, for the common purposes of investment, by such as were in possession of capital to invest, and when the proprietors exercised their proper discretion in constituting their part of the direction with a single view of giving to the bank a safe and competent administration.

The question now is, Sir, whether this institution shall be continued. We ought to treat it as a great public subject; to consider it, like statesmen, as it regards the great interests of the country, and with as little mixture as possible of all minor motives.

The influence of the bank, Mr. President, on the interests of the government, and the interests of the people, may be considered in several points of view. It may be regarded as it affects the currency of the country; as it affects the collection and disbursement of the public revenue; as it respects foreign exchanges; as it respects domestic exchanges; and as it affects, either generally or locally, the agriculture, commerce, and manufactures of the Union.

First, as to the currency of the country. This is, at all times, a most important political object. A sound currency is an essential and indispensable security for the fruits of industry and honest enterprise. Every man of property or industry, every man who desires to preserve what he honestly possesses, or to obtain what he can honestly earn, has a direct interest in maintaining a safe circulating medium; such a medium as shall be a real and substantial representative of property, not liable to vibrate with opinions, not subject to be blown up or blown down by the breath of speculation, but made stable and secure by its immediate relation to that which the whole world regards as of a permanent value. A disordered currency is one of the greatest of political evils. It undermines the virtues necessary for the support of the social system, and encourages propensities destructive of its happiness. It wars against industry, frugality, and economy; and it fosters the evil spirits of extravagance and

speculation. Of all the contrivances for cheating the laboring classes of mankind, none has been more effectual than that which deludes them with paper money. This is the most effectual of inventions to fertilize the rich man's field by the sweat of the poor man's brow. Ordinary tyranny, oppression, excessive taxation, these bear lightly on the happiness of the mass of the community, compared with a fraudulent currency, and the robberies committed by depreciated paper. Our own history has recorded for our instruction enough, and more than enough, of the demoralizing tendency, the injustice, and the intolerable oppression on the virtuous and well disposed, of a degraded paper currency, authorized by law, or in any way countenanced by government.

We all know, Sir, that the establishment of a sound and uniform currency was one of the great ends contemplated in the adoption of the present Constitution. If we could now fully explore all the motives of those who framed and those who supported that Constitution, perhaps we should hardly find a more powerful one than this. The object, indeed, is sufficiently prominent on the face of the Constitution itself. It cannot well be questioned, that it was intended by that Constitution to submit the whole subject of the currency of the country, all that regards the actual medium of payment and exchange, whatever that should be, to the control and legislation of Congress. Congress can alone coin money; Congress can alone fix the value of foreign coins. No State can coin money; no State can fix the value of foreign coins; no State (nor even Congress itself) can make any thing a tender but gold and silver, in the payment of debts; no State can emit bills of credit. The exclusive power of regulating the metallic currency of the country would seem necessarily to imply, or, more properly, to include, as part of itself, a power to decide how far that currency should be exclusive, how far any substitute should interfere with it, and what that substitute should be. The generality and extent of the power granted to Congress, and the clear and well-defined prohibitions on the States, leave little doubt of an intent to rescue the whole subject of currency from the hands of local legislation, and to confer it on the general government. But, notwithstanding this apparent purpose in the Constitution, the truth is, that the currency of the country is now, to a very great

extent, practically and effectually under the control of the several State governments; if it be not more correct to say, that it is under the control of the banking institutions created by the States; for the States seem first to have taken possession of the power, and then to have delegated it.

Whether the States can constitutionally exercise this power, or delegate it to others, is a question which I do not intend, at present, either to concede or to argue. It is much to be hoped, that no controversy on the point may ever become necessary. But it is matter highly deserving of consideration, that, although clothed by the Constitution with exclusive power over the metallic currency, Congress, unless through the agency of a bank established by its authority, has no control whatever over that which, in the character of a mere representative of the metallic currency, fills up almost all the channels of pecuniary circulation.

In the absence of a Bank of the United States, the State banks become effectually the regulators of the public currency. Their numbers, their capital, and the interests connected with them, give them, in that state of things, a power which nothing is competent to control. We saw, therefore, when the late war broke out, and when there was no national bank in being, that the State institutions, of their own authority, and by an understanding among themselves, under the gentle phrase of suspending specie payments, everywhere south of New England refused payment of their notes, and thus filled the country with irredeemable and degraded paper. They were not called to answer for this violation of their charters, as far as I remember, in any one State. They pleaded the urgency of the occasion, and the public distresses; and in this apology the State governments acquiesced. Congress, at the same time, found itself in an awkward predicament. It held the whole power over coins. No State or State institution could give circulation to an ounce of gold or of silver, not sanctioned by Congress. Yet all the States, and a hundred State institutions, claimed and exercised the right of driving coin out of circulation by the introduction of their own paper; and then of depreciating and degrading that paper, by refusing to redeem it. As they were not institutions created by this government, they were not answerable to it. Congress could not call them to account, and if it could, Congress had no bank of its own, whose circulation could supply the

wants of the community. Coin, the substantial constituent, was, and was admitted to be, subject only to the control of Congress; but paper, assuming to be a representative of this constituent, was taking great liberties with it, at the same time that it was no way amenable to its constitutional guardian. This suspension of specie payments was of course immediately followed by great depreciation of the paper. It shortly fell so low, that a bill on Boston could not be purchased at Washington under an advance of from twenty to twenty-five per cent. I do not mean to reflect on the proceedings of the State banks. Perhaps their best justification is to be found in the readiness with which government itself borrowed their paper of them, depreciated as it was; but it certainly becomes us to consider attentively this part of our experience, and to guard, as far as we can, against similar occurrences.

I am of opinion, Sir, that a well-conducted national bank has an exceedingly useful and effective operation on the general paper circulation of the country. I think its tendency is manifestly to restrain within some bounds the paper issues of other institutions. If it be said, on the other hand, that these institutions, in turn, hold in check the issues of the national bank, so much the better. Let that check go to its full extent. An overissue, even by the bank itself, no one can desire. But it is plain, that, by holding State institutions which come into immediate contact with itself and its branches to an accountability for their issues, not yearly or quarterly, but daily and hourly, an important restraint is exercised. Be it remembered always, that what it is to expect from others, it is to perform itself; and that its own paper is at all times to turn into coin at the first touch of its own counter.

But, Mr. President, so important is this object, that I think, that, far from diminishing, we ought rather to increase and multiply our securities; and I am not prepared to say that, even with the continuance of the bank charter, and under its wisest administration, I regard the state of our currency as entirely safe. It is evident to me that the general paper circulation has been extended too far for the specie basis on which it rests. Our system, as a system, dispenses too far, in my judgment, with the use of gold and silver. Having learned the use of paper as a substitute for specie, we use the substitute, I fear, too

freely. It is true, that our circulating paper is all redeemable in gold and silver. Legally speaking, it is all convertible into specie at the will of the holder. But a mere legal convertibility is not sufficient. There must be an actual, practical, never-ceasing convertibility. This, I think, is not at present sufficiently secured; and, as it is a matter of high interest, it well deserves the serious consideration of the Senate. The paper circulation of the country is at this time probably seventy-five or eighty millions of dollars. Of specie, we may have twenty or twenty-two millions; and this principally in masses, in the vaults of the banks. Now, Sir, this is a state of things which, in my judgment, leads constantly to over-trading, and to the consequent excesses and revulsions which so often disturb the regular course of commercial affairs. A circulation consisting in so great a degree of paper is easily expanded, to furnish temporary capital to such as wish to adventure on new enterprises in trade; and the collection in the banks of the greater part of the specie in the country affords all possible facility for its exportation. Hence, over-trading does frequently occur, and is always followed by an inconvenient, sometimes by a dangerous, reduction in the amount of coin. It is in vain that we look to the prudence of the banks for an effectual security against over-trading. The directors of such institutions will generally go to the length of their means in cashing good notes, and leave the borrower to judge for himself of the useful employment of his money.

Nor would a competent security against over-trading be always obtained, if the banks were to confine their discounts strictly to business paper, so denominated; that is, to notes and bills which represent real transactions, having been given and received on the actual purchase and sale of merchandise; because these transactions themselves may be too far extended. In other words, more may be bought than the wants of the community require, on a speculative calculation of future prices. Men naturally have a good opinion of their own sagacity. He who believes merchandise is about to rise in price, will buy merchandise, if he possesses money, or can obtain credit. The fact of actual purchase, therefore, is not proof of a really subsisting want; and of course the amount of all purchases does not correspond always with the entire wants or necessities of the community. Too frequently it very much exceeds that measure.

If, then, the discretion of the banks, exercised in deciding the amount of their discounts, is not a proper security against overtrading, if facility in obtaining bank credits naturally fosters that spirit, if the desire of gain and love of enterprise constantly cherish it, and if it finds specie collected in the banks inciting exportation, what is the remedy suited and adequate to the case?

Now I think, Sir, that a closer inquiry into the direct source of the evil will suggest the remedy. Why have we so small an amount of specie in circulation? Certainly the only reason is, because we do not require more. We have but to ask its presence, and it would return. But we voluntarily banish it by the great amount of small bank-notes. In most of the States, the banks issue notes of all low denominations, down even to a single dollar. How is it possible, under such circumstances, to retain specie in circulation? All experience shows it to be impossible. The paper will take the place of the gold and silver. When Mr. Pitt, in the year 1797, proposed in Parliament to authorize the Bank of England to issue one-pound notes, Mr. Burke lay sick at Bath of an illness from which he never recovered; and he is said to have written to the late Mr. Canning, "Tell Mr. Pitt, that, if he consents to the issuing of one-pound notes, he must never expect to see a guinea again." The one-pound notes were issued, and the guineas disappeared. A similar cause is producing now a precisely similar effect with us. Small notes have expelled dollars and half-dollars from circulation in all the States in which such notes are issued. On the other hand, dollars and half-dollars abound in those States which have adopted a wiser and safer policy. Virginia, Pennsylvania, Maryland, Louisiana, and some other States, I think seven in all, do not allow their banks to issue notes under five dollars. Every traveller notices the difference, when he passes from one of these States into those where small notes are allowed.

The evil, then, is the issuing of small notes by State banks. Of these notes, that is to say, of notes under five dollars, the amount now in circulation is doubtless eight or ten millions of dollars. Can these notes be withdrawn? If they can, their place will be immediately supplied by a specie circulation of equal amount. The object is a great one, as it is connected with the safety and stability of the currency, and may

well justify a serious reflection on the means of accomplishing it. May not Congress and the State governments, acting, not unitedly, but severally, to the same end, easily and quietly attain it? I think they may. It is but for other States to follow the good example of those which I have mentioned, and the work is done. As an inducement to the States to do this, I propose, in the present bill, to reserve to Congress a power of withdrawing from circulation a pretty large part of the issues of the Bank of the United States. I propose this, so that the State banks may withdraw their small notes, and find their compensation in a larger circulation of those of a higher denomination. My proposition will be, that, at any time after the expiration of the existing charter of the bank, that is, after 1836, Congress may, if it see fit, restrain the bank from issuing for circulation notes or bills under a given sum, say, ten or twenty dollars. This will diminish the circulation, and consequently the profits, of the bank; but it is of less importance to make the bank a highly profitable institution to the stockholders, than that it should be safe and useful to the community. It ought not, certainly, to be restrained from the enjoyment of all the fair advantages to be derived from the discreet use of its capital in banking transactions; but the leading object, after all, in its continuance, is, and ought to be, not private emolument, but public benefit.

It may, perhaps, strike some gentlemen, that the circulation of small notes might be effectually discouraged, by refusing to receive not only all such notes, but all notes of such banks as issue them, at the custom-houses, land-offices, post-offices, and other places of public receipt, and by causing them to be refused also, either in payment or deposit, at the Bank of the United States. But the effect of such refusal may be doubtful. It would certainly, in some degree, discredit such notes; but probably it would not drive them out of circulation altogether; and if it should not do this, it might very probably increase their circulation. If in some degree they become discredited, to that degree they will become cheaper than other notes; and universal experience proves, that, of two things which may be current, the cheaper will always expel the other. Thus, silver itself, because it is proportionably cheaper with us than gold, has driven the gold out of the country; that is to say, we

can pay a debt of one hundred dollars, by tendering that number of Spanish or American dollars. But we cannot go into the market, and buy ten American eagles for these hundred silver dollars. They would cost us a hundred and four. Thus, as we can pay our debts cheaper in silver than in gold, we use nothing but silver, and the gold goes where it is more highly valued. The same thing always happens between two sorts of paper, which are found at the same time in circulation. That which is cheapest, or of less value than the other, always drives its more respectable associate out of its company.

Measures, therefore, such as I have alluded to, would be likely, I fear, rather to aggravate than to remedy the evil. We must hope that all notes under five dollars may be entirely withdrawn from circulation, by the consent of the States and the State banks; and when that shall be done, their place will be immediately supplied by specie. We should then receive an accession of ten millions of dollars, at least, to our specie circulation; and these ten millions will find their place, not in the banks, not collected anywhere in large masses, but in constant use, among all classes, and in hourly transfer from hand to hand. It cannot be denied that such an addition would give great strength to our pecuniary system, discourage excessive exportation of specie, and tend to restrain and correct the evils of overtrading. England has applied the like remedy to a similar evil, though she has carried the restriction much higher, and allowed the circulation of no notes for less sums than five pounds sterling.

I have thought this subject, Mr. President, of so much importance, that it was fit to present it, at this time, to the consideration of the Senate. I propose to do no more at present than to insert such a provision as I have described in this bill. In the mean time, I hope the matter may attract the attention of those whose agency will be desired to accomplish the general object.

The next point on which I will offer a few remarks is the great advantage of the bank in the operations of the Treasury; first in the collection, and, next, in the disbursement of the revenue. How is the revenue to be collected through all the custom-houses, the land-offices, and the post-offices, without some such means as the bank affords? Where are payments made at

the custom-houses to be deposited? In whose hands are these large sums to be trusted? And how are they to be remitted to Washington, or wherever else they may be wanted? I dare say, Sir, that the operations of the government might be carried on in some way without the agency of a bank; but the question is, whether they could be carried on safely, without loss and without charge. Look to the disbursement of the revenue. At present, the bank is bound to transmit government funds in one place to any other place, without expense. A dollar at St. Louis or Nashville becomes a dollar in New Hampshire or Maine, if the Treasury so choose. This certainly is very useful and convenient. If there were no Bank of the United States at New Orleans, for example, duties to the government at that place must be received either in specie, or in bills of local banks. If in the former, the funds could not be remitted where they might be required, without considerable expense; if in the latter, they could not be remitted at all, until first converted into specie. If bills of exchange were resorted to, they would often command a premium, and would be always attended with more or less risk. In short, the utility of the bank in collecting and disbursing the revenue is too obvious to be argued, and too great not to strike any one, conversant with such subjects, without the aid of comment.

I have alluded to its dealings in foreign exchanges as one of the most important powers of the corporation. There are those who think this power ought to be withheld. The possession of it is, I think, one of the most common objections to the bank in the large cities; but I do not think it a well-founded objection. It is said that the trade in exchange ought to be left free, like other traffic. Be it so; but then why not leave it as free to the bank as to others? The bank enjoys no monopoly. If it be true, that, by the magnitude of its capital and the distribution of its several offices, it acts upon the rates of exchange, not locally, but generally, and thus occasionally restrains the profit of dealing in one place by bringing the general rates through the whole country nearer to a uniformity, the occasional profits of individuals may be lessened, but the general effect is beneficial to the public. If, at the same time that it keeps the domestic exchanges of the country at low rates, it keeps the rates of foreign exchanges nearly uniform and level, I hardly know

how it could do greater service to the commercial community. In the business of foreign exchange the bank has, and always will have, powerful rivals. It is natural that these rivals should desire that, in this particular, the bank should retire from business. But are its dealings in exchange found prejudicial, by those who deal in it themselves no further than to buy for their own remittances in the ordinary way of business? In things of this kind we may most safely guide ourselves by the light of experience. Taking it for granted that the general interest of the trading community is injured by sudden fluctuations in exchange, and benefited by keeping it as steady as the commerce of the country will allow, — in other words, by making the price of bills correspond with the real state of the exchange, instead of being raised or lowered for ends of speculation, — I have inquired of those who could inform me, whether, for ten or twelve years past, the rates of exchange have, or have not, been as steady and unvarying as may ever be expected; and the information I have received has satisfied me that the power of the bank of dealing in foreign exchange has been far from prejudicial to the commercial world. While there is a dealer with competent funds and credit always willing to sell foreign bills at moderate rates, and always ready also to buy them, the very nature of the case furnishes a considerable degree of security against those fluctuations which arise from speculation, although it leaves private dealings entirely free.

If that power should be now taken away from the bank, I think I can perceive that consequences of some magnitude would follow, in particular parts of the country. At present, the producer or the shipper of produce at New Orleans, Savannah, or Charleston, in making shipment for Europe, can, on the spot, cash his bill, drawn against such shipment, without charge for brokerage, guaranty, or commission. If the planter has sold to the shipper, the latter has his bill discounted, and pays the planter, who thus receives the price for his crop without delay, and without danger of loss. Suppose the bank were denied the power of purchasing foreign bills, what would be the necessary operation? The producer or shipper might send the cotton or the sugar to the North, and in that case the bank could cash his draft. But if he sent it abroad, his bill must be sent to his agent, in the bill market of the Northern cities, for sale;

and if he wishes to realize the amount, he will draw on his agent, and sell such draft. This evidently subjects him to a double operation, and to the expenses of commission and guaranty.

It is plain, I think, that, in the present state of things, the shipper of Southern and Western produce enjoys the benefit of both the foreign and the Northern market more perfectly than he would if this state of things were to be so changed, that he could not draw on his consignee in the foreign market as advantageously as he can now do it.

But if there be a question about the utility of the operations of the bank in foreign exchange, there can be none, I suppose, as to its influence on that which is internal or domestic. I speak now of internal exchange as exchange merely; without considering it connected, as it usually is, with advance or discount, in anticipation of the maturity of bills. In regard to mere exchange, the operations of the bank appear to have produced the most beneficial effect. I doubt whether, in any extensive country, the rates of internal exchange ever averaged so low. Before the bank went into operation, three, four, or five per cent. was not uncommon as the difference of exchange between one extremity of the country and the other. It has at times, indeed, as I am informed, been as high as six per cent. between New Orleans and Baltimore; and between other places in this country much higher. The vast amounts bought and sold by the bank, in all parts of the country, average, perhaps, less than one half of one per cent. I doubt whether this exceeds the rates between comparatively neighboring parts of Great Britain, or of the continent of Europe, although much of it consists in exchange between the extreme South and the northern and eastern parts of the Union.

With respect to the effect and operation of the bank upon the general interests of agriculture, commerce, and manufactures, there will be found a great difference as we look at different parts of the country. Everywhere, I think, they have been salutary; but they have been important in very different degrees in different quarters. The influence of the bank on the general currency of the country, and its operations in exchanges, are benefits of a general nature. These are felt all over the country. But in loans and discounts, in

the distribution and actual application of its capital, different portions of the country have partaken, and are partaking, in very different degrees. The West is a new and fast-growing country, with vast extents of rich land, inviting settlement and cultivation. Enterprise and labor are pressing to this scene of useful exertion, and necessarily create an urgent demand for capital. This demand the bank meets to a very considerable degree. The reports of the bank show the existing extent of its accommodation to this part of the country. In the whole Southern and Western States, that is to say, south and west of Philadelphia, the amount exceeds forty-three millions of dollars. In the States lying on the Mississippi and its waters, it exceeds thirty millions of dollars. Of these thirty millions, nineteen or twenty are discounts of notes, and the residue of acceptances of bills drawn on other parts of the country. This last amount is not strictly a loan; it is an advance in anticipation of a debt; but other advances are needed, quite as fast as this is paid off, as every successive crop creates a new occasion, and a new desire to sell bills. I leave it to Western gentlemen to judge how far this state of things goes to show that the continuance of the bank is important to the agriculture and commerce of the West. I leave it to them to contemplate the consequences of withdrawing this amount of capital from their country. I pray them also to inquire what is to be their circulating medium, when the notes of the bank are called in? Do they see before them neither difficulty nor danger in this part of the case? Are they quite confident, that, in the absence of the bills and notes of the Bank of the United States, they need have no fears of a bad currency, depreciated paper, and the long train of ills that follow, according to all human experience, those inauspicious leaders? I ask them, also, to judge how far it is wise to settle this question now, so as to give time for making this vast change, if it is to be made at all. The present charter is to continue but four years. If it be not renewed, this debt must be called in within that period. Not a new note can be taken to the bank for a dollar of it, after that time. The whole circulation of bank-notes, too, must be withdrawn. Is it not plain, then, that it is high time to know how this important matter is to be adjusted? The country could not stand a sudden recall of all this capital, and an abrupt withdrawal of this

circulation. How, indeed, the West could stand the change, even if it were begun now, and conducted as gradually and as gently as possible, I confess, I can hardly see. The very commencement of the process of recall, however slight, would be felt in the prices of the very first crop, partly from the immediate effect of withdrawing even a small portion of the capital, and partly from the certainty of future pressure from withdrawing the rest.

Indeed, gentlemen must prepare themselves, I think, for some effect on prices of lands and commodities by the postponement of this question, should it take place, as well as for embarrassments in other respects. That postponement will, at best, not diminish the uncertainty which hangs over the fate of the measure. Seeing the hostility which exists to renewing the charter and the extent of that hostility, if the measure cannot now be carried, not only a prudent regard to its own interests, but the highest duty to the country, ought to lead the bank to prepare for the termination of its career. It has not before it one day too many to enable it to wind up such vast concerns, without distressing the public. If it were certain that the charter was to be renewed, a postponement would be of little importance. But this is uncertain, and a postponement would render it more uncertain. A motion to postpone, should such be made, will be mainly supported by those who, either on constitutional grounds, or some other grounds, are and always will be against the renewal of the charter. A postponement under such circumstances, and such auspices, cannot but create far stronger doubts than now exist of the final renewal of the charter. It is now two years and a half since the President invited the attention of Congress to this subject. That invitation has been more than once repeated. Everywhere the subject has been considered; everywhere it has been discussed. The public interest now requires our decision upon it, and the public voice demands that decision. I trust, Sir, we shall make it, and make it wisely.

Mr. President, the motives which prescribe my own line of conduct, on this occasion, are not drawn from any local considerations. The State in whose representation I bear a part has as little interest peculiar to itself, in the continuance of this corporation, as any State in the Union. She does not need the aid

of its capital, because the state of her commerce and manufactures does not call for the employment of more capital than she possesses. She does not need it, in a peculiar degree, certainly, as any restraint or corrective on her own paper currency. Her banks are as well conducted as those of other States. But she has a common interest in the continuance of a useful institution. She has an interest in the wise and successful administration of the government, in all its departments. She is interested that the general currency of the country should be maintained in a safe and healthy state. She derives a benefit with others (I believe it a great benefit) from the facility of exchanges in internal commerce, which the bank affords. This is the sum of her motives. For these reasons, she is willing that the bank should be continued. But if the matter should be otherwise determined, however much she might regret it on general and public grounds, she certainly does not apprehend from that result such inconveniences to her own citizens as may and must fall, so far as I can see, on some others.

Mr. President, I will take leave of the subject for the present, with a remark which I think is due from me. For some years past, I have not been inattentive to the general operations of the bank, or to their influence on the public interests and the convenient administration of the government; and I take the occasion to say, with sincerity and cheerfulness, that, during that period, its affairs have been conducted, in my opinion, with fidelity, as well towards the government as towards its own stockholders; and that it has sought the accomplishment of the public purposes designed by its institution with distinguished ability and distinguished success.

FURTHER REMARKS ON THE BANK OF THE UNITED STATES, MADE IN THE SENATE ON THE 28TH OF MAY, 1832.

The question being on the amendment offered by Mr. Moore of Alabama, proposing, —

"First, That the bank shall not establish or continue any office of discount or deposit, or branch bank, in any State, without the consent and approbation of the State;

"Second, That all such offices and branches shall be subject to taxation, according to the amount of their loans and issues, in like manner as other banks or other property shall be liable to taxation";—

Mr. Webster spoke as follows:—

I trust, Sir, the Senate will not act on these propositions without fully understanding their bearing and extent. For myself, I look upon the two parts of the amendment as substantially of the same character. Each, in my opinion, confers a power in the States to expel the bank at their pleasure; in other words, entirely to defeat the operations, and destroy the capacity for usefulness, of the whole bank. The simple question is, Shall we, by our own act, in the charter itself, give to the States this permission to expel the bank and all its branches from their limits, at their own pleasure? The first part of the amendment gives this permission in express terms; and the latter part gives it in effect, by authorizing the States to tax the loans and issues of the bank, with no effectual limitation. It appears to me idle to say, that this power may be safely given, because it will not be exercised. It is to be given, I presume, on the supposition that probably some of the States will choose to exercise it; else why is it given at all? And will they not so choose? We have already heard, in the course of this debate, of two cases in which States attempted to exercise a power of this kind, when they did not constitutionally possess it. Two States have taxed the branches, for the avowed purpose of driving them out of their limits, and were prevented from accomplishing this object merely by force of judicial decisions against their right. If, then, these attempts have been made to exercise this power when it was not legally possessed, and against the will of Congress, is there any doubt that it will be exercised when its exercise shall be permitted and invited by the proposed amendment? No doubt, in my mind, the power, if granted, will be exercised, and the main object of continuing the bank will be thus defeated.

I have already said, that the second branch of the amendment is as objectionable and as destructive as the first. I think it so. It appears to me to give ample power, by means of taxation, to expel the bank from any State which may choose to expel it. It gives a power of taxation without fixed limits, or any reasonable guards. And a power of taxation without fixed limits,

and without guards, is a power to embarrass, a power to oppress, a power to expel, a power to destroy. The States are to be allowed to tax the branches according to the amount of their loans and discounts, in like manner as other banks, or other property in the State, shall be liable to taxation.

Now, Sir, some of the States have no banks. Of course they tax no banks. In other States, the banks pay the State a *bonus* on their creation, and are not otherwise taxed. In other cases, the State, in effect, itself owns the bank, and a tax on it, therefore, would be merely nominal. Besides, no State is to be bound to lay this tax as it taxes its own banks. It has an option to tax it in that manner, or as other property is taxed. What other property? It may be as lottery-tickets, gaming-tables, or other things which may be deemed fit to be discouraged or suppressed, are taxed. The bank may be classed with other nuisances, and driven out or put down by taxation. All this is perfectly within the scope of the amendment. The license is broad enough to authorize any thing which may be designed or wished.

Now, Sir, I doubt exceedingly our power to adopt this amendment, and I pray the deliberate consideration of the Senate in regard to this point. In the first place, let me ask, What is the constitutional ground on which Congress created this corporation, and on which we now propose to continue it? There is no express authority to create a bank, or any other corporation, given to us by the Constitution. The power is derived by implication. It has been exercised, and can be exercised, only on the ground of a just necessity. It is to be maintained, if at all, on the allegation, that the establishment of a national bank is a just and necessary means for carrying on the government, and executing the powers conferred on Congress by the Constitution. On this ground, Congress has established this bank, and on this it is now proposed to be continued. And it has already been judicially decided, that, Congress having established a bank for these purposes, the Constitution of the United States prohibits the States from taxing it. Observe, Sir, it is the *Constitution*, not the *law*, which lays this prohibition on the States. The charter of the bank does not declare that the States shall not tax it. It says not one word on that subject. The restraint is imposed, not by Congress, but by a higher authority, the Con-

stitution. Now, Sir, I ask how *we* can relieve the States from this constitutional prohibition. It is true, that this prohibition is not imposed in express terms; but it results from the general provisions of the Constitution, and has been judicially decided to exist in full force. This is a protection, then, which the Constitution of the United States, by its own force, holds over this institution, which Congress has deemed necessary to be created in order to carry on the government, so soon as Congress, exercising its own judgment, has chosen to create it. Can we throw off from this government this constitutional protection? I think it clear we cannot. We cannot repeal the Constitution. We cannot say that every power, every branch, every institution, and every law of this government shall not have all the force, all the sanction, and all the protection, which the Constitution gives it.

By the Constitution, every law of Congress is finally to be considered, and its construction ultimately settled, by the Supreme Court of the United States. These very acts before referred to, taxing the banks, were held valid by some of the judicatures of the States, but were finally pronounced unconstitutional by the Supreme Court of the United States; and this, not by force of any words in the charter, but by force of the Constitution itself. I ask whether it is competent for us to reverse this provision of the Constitution, and to say that the laws of Congress shall receive their ultimate construction from the State courts. Again, the Constitution gives Congress a right to lay duties of impost, and it prohibits the exercise of any such power by the States. Now it so happens, that the national treasury is much better supplied than the treasuries of the States. It might be thought very convenient that a part of the receipts at the custom-houses should be received by the States. But will any man say that Congress could now authorize the States to lay and collect imposts under any restrictions or limitations whatever? No one will pretend it. That would be to make a new partition of power between this government and the State governments. Mr. Madison has very correctly observed, that the assent of the States cannot confer a new power on Congress, except in those cases especially provided in the Constitution. This is very true, and it is equally true that the States cannot obtain a new power by the consent of Congress, against the

prohibition of the Constitution, except in those cases which are expressly so provided for in the Constitution itself.

These reasons, Sir, lead me to think that, if, for purposes connected with the beneficial administration of the government, we deem it necessary to continue this corporation, we are not at liberty to repeal any protection, or any immunity, with which the Constitution surrounds it. We cannot give to a law of the United States less than its constitutional effect. The Constitution says, that every such law, passed in pursuance of the Constitution, shall be paramount to any State law. We cannot enact that it shall not be so; for that would be so far to repeal the Constitution.

Allow me now, Mr. President, to inquire on what ground it is that the States claim this power of taxation. They do not claim it as a power to tax all property of their own citizens. This they possess, without denial or doubt. Every stockholder in the bank is liable to be taxed for his property therein, by the State of which he is a citizen. This right is exercised, I believe, by all the States which lay taxes on money at interest, income, and other subjects of that kind. It is, then, not that they may be authorized to tax the property of their own citizens. Nor is it because any State does not participate in the advantage of the premium, or bonus, paid by the bank to government for the charter. That sum goes into the treasury for the general good of all.

Nor can the claim be sustained, nor, indeed, is it asserted, on the strength of the mere circumstance that a branch, or an office, is established in a State. Such office or branch is but an agency. It is no body politic or corporate. It has no legal existence of itself. It is but an agent of the general corporation. That these agents have their residence or place of business in a particular State, is not of itself the foundation of any claim. But, according to the language of the amendment, the ground of this claim to tax is evidently the loans and issues: and these loans and issues, properly speaking, are the loans and discounts of the bank. The office, as an agent, conducts the arrangements, it is true; but the notes which are issued are notes of the bank, and the debts created are debts due to the bank. The circulation is the circulation of the bank. Now the truth is, what the States claim, or what this amendment proposes to give them, is a right to tax the circulation of

the bank. It is on this right that, the argument rests. The common way of stating it is, that, since State banks pay a tax to the State, these branch banks among them ought to pay a similar tax. But the State banks pay the tax to the State for the privilege of circulation; and the proposition is, therefore, neither more nor less than that the United States Bank shall pay the States for the same privilege. The circulation of the bills is the substance. The locality of the office is but an incident. An office is created, for example, on Connecticut River, either in Massachusetts, Vermont, Connecticut, or New Hampshire. The notes of the bank are loaned at this office, and put into circulation in all these States. Now, no one will say that the State where the office happens to be placed should have a right to lay this tax, and the other States have no such right. This would be a merely arbitrary distinction. It would be founded on no real or substantial difference; and no man, as it seems to me, could seriously contend for it. Under this very amendment, Pennsylvania would be authorized to collect a large tax, and New Jersey no tax at all, although the State circulation of New Jersey is as much infringed and diminished as that of Pennsylvania by the circulation of the Bank of the United States. The States which have the benefit of branches (if it be a benefit) are to have the further advantage of taxation; while other States are to have neither the one nor the other. Founding the claim on the State right to derive benefit from the paper circulation which exists within it, the advocates of the claim are clearly not consistent with themselves, when they maintain a measure which professes to protect that right in some States, and to leave it unprotected in others.

But the inequality of the operation of this amendment is not the only, nor the main, objection to it. It proceeds on a principle not to be admitted. It asserts, or it takes for granted, that the power of authorizing and regulating the paper currency of the country is an exclusive State right. The ground assumed can be no less broad than this; because, the Bank of the United States having the grant of a power from Congress to issue notes for circulation, its right is perfect, if Congress could make such a grant. It owes nothing to the States, if Congress could give what it has undertaken to give; that is to say, if Congress, of its own authority, may confer a right to issue paper for circula-

tion. Now, Sir, whosoever denies this right in Congress denies, of course, its power to create such a bank as now exists; at least, so it strikes me. The Bank of the United States is quite unconstitutional, if the whole paper circulation belongs to the States; because the Bank of the United States is a bank of circulation, and was so intended to be by Congress, which expressly authorized the circulation of notes and bills. The power of issuing notes for circulation is not an indispensable ingredient in the constitution of a bank, merely as a bank. The earlier banks did not possess it, and many good ones have existed without it. A bank with no such power might yet very well collect the public revenue, provided there was a proper medium in which it could be paid; could tolerably well remit the revenue to the treasury; and could deal usefully, to some extent, in the business of exchange.

On what ground is it, then, that Congress possesses the power, not only to create a bank, but a bank of circulation? Simply, as I suppose, because Congress possesses a constitutional control over the currency of the country, and has power to provide a safe medium of circulation, as well for other purposes as for the collection of its own debts and revenue. The bank, therefore, already possesses unconstitutional power, if the paper circulation be the subject, exclusively, of State right or State regulation. Indeed, Sir, it is not a little startling that such exclusive right should now be asserted. I observed, the other day, that, in my opinion, it was very difficult to maintain, on the face of the Constitution itself, and independent of long-continued practice, the doctrine that the States could authorize the circulation of bank paper at all. They cannot coin money; can they, then, coin that which becomes the actual and almost the universal substitute for money? Is not the right of issuing paper, intended for circulation, in the place and as the representative of metallic currency, derived merely from the power of coining and regulating that metallic currency? As bringing this matter to a just test, let me ask whether Congress, if it had not the power of coining money, and of regulating the value of foreign coins, could create a bank, with the power to circulate bills. For one, I think it would be difficult to make that out. Where, then, do the States, to whom all control over the metallic currency is altogether prohibited, get this power? It is true that, in other

countries, private bankers, having no legal authority over the coin, issue notes for circulation. But this they do always with the consent of government, express or implied; and government restrains and regulates all their operations at its pleasure. It would be a startling proposition, in any other part of the world, that the prerogative of coining money, held by government, was liable to be defeated, counteracted, or impeded, by another prerogative, held in other hands, of authorizing a paper circulation.

It is further to be observed, that the States cannot issue bills of credit; not that they cannot make them a legal tender, but that they cannot issue them at all. Is not this a clear indication of the intent of the Constitution to restrain the States, as well from establishing a paper circulation, as from interfering with the metallic circulation? Banks have been created by States with no capital whatever; their notes being put into circulation simply on the credit of the State, or the State law. What are the issues of such banks but bills of credit, issued by the State?

I confess, Mr. President, that the more I reflect on this subject, the more clearly does my mind approach the conclusion, that the creation of State banks, for the purpose and with the power of circulating paper, is not consistent with the grants and prohibitions of the Constitution. But, Sir, this is not now the question. The question is, not whether the States have the power; it is, whether they *alone* have the power. May they rightfully *exclude* the United States from all interference with the paper currency? Are we interlopers, when we create a bank of circulation? Do we owe them a seigniorage for the circulation of bills, by a corporation created by Congress? Up to the present time, the States have been content with a concurrent power. They have, indeed, controlled vastly the larger portion of the circulation; but they have not claimed exclusive authority over the whole. They have demanded no tax or tribute from a bank issuing paper under the authority of Congress. Nor do I know that any State or States now insist upon it. It may be, that individual States have put forth such claims, in their legislative capacity; but at present I recollect no instance. The amendment, however, which is now proposed, asserts the claim, and I cannot consent to yield to it. We seem to be making the last struggle for the authority of Congress to inter-

fere at all with the actual currency of the country. I shall never agree to surrender that authority; I would as soon yield the coinage power itself; nor do I think there would be much greater danger, nor a much clearer departure from constitutional principle, in a consenting to such surrender, than in acquiescing in what is now proposed.

The Presidential Veto of the United States Bank Bill*

Mr. President, no one will deny the high importance of the subject now before us. Congress, after full deliberation and discussion, has passed a bill, by decisive majorities, in both houses, for extending the duration of the Bank of the United States. It has not adopted this measure until its attention had been called to the subject, in three successive annual messages of the President. The bill having been thus passed by both houses, and having been duly presented to the President, instead of signing and approving it, he has returned it with objections. These objections go against the whole substance of the law originally creating the bank. They deny, in effect, that the bank is constitutional; they deny that it is expedient; they deny that it is necessary for the public service.

It is not to be doubted, that the Constitution gives the President the power which he has now exercised; but while the power is admitted, the grounds upon which it has been exerted become fit subjects of examination. The Constitution makes it the duty of Congress, in cases like this, to reconsider the measure which they have passed, to weigh the force of the President's objections to that measure, and to take a new vote upon the question.

Before the Senate proceeds to this second vote, I propose to make some remarks upon those objections. And, in the first place, it is to be observed, that they are such as to extinguish all hope that the present bank, or any bank at all resembling it, or resembling any known similar institution, can ever receive his

* A Speech delivered in the Senate of the United States, on the 11th of July, 1832, on the President's Veto of the Bank Bill.

approbation. He states no terms, no qualifications, no conditions, no modifications, which can reconcile him to the essential provisions of the existing charter. He is against the bank, and against any bank constituted in a manner known either to this or any other country. One advantage, therefore, is certainly obtained by presenting him the bill. It has caused the President's sentiments to be made known. There is no longer any mystery, no longer a contest between hope and fear, or between those prophets who predicted a *veto* and those who foretold an approval. The bill is negatived; the President has assumed the responsibility of putting an end to the bank; and the country must prepare itself to meet that change in its concerns which the expiration of the charter will produce. Mr. President, I will not conceal my opinion that the affairs of the country are approaching an important and dangerous crisis. At the very moment of almost unparalleled general prosperity, there appears an unaccountable disposition to destroy the most useful and most approved institutions of the government. Indeed, it seems to be in the midst of all this national happiness that some are found openly to question the advantages of the Constitution itself; and many more ready to embarrass the exercise of its just power, weaken its authority, and undermine its foundations. How far these notions may be carried, it is impossible yet to say. We have before us the practical result of one of them. The bank has fallen, or is to fall.

It is now certain, that, without a change in our public counsels, this bank will not be continued, nor will any other be established, which, according to the general sense and language of mankind, can be entitled to the name. Within three years and nine months from the present moment, the charter of the bank expires; within that period, therefore, it must wind up its concerns. It must call in its debts, withdraw its bills from circulation, and cease from all its ordinary operations. All this is to be done in three years and nine months; because, although there is a provision in the charter rendering it lawful to use the corporate name for two years after the expiration of the charter, yet this is allowed only for the purpose of suits and for the sale of the estate belonging to the bank, and for no other purpose whatever. The whole active business of the bank, its custody of public deposits, its transfer of public moneys, its dealing in

exchange, all its loans and discounts, and all its issues of bills for circulation, must cease and determine on or before the third day of March, 1836; and within the same period its debts must be collected, as no new contract can be made with it, as a corporation, for the renewal of loans, or discount of notes or bills, after that time.

The President is of opinion, that this time is long enough to close the concerns of the institution without inconvenience. His language is, "The time allowed the bank to close its concerns is ample, and if it has been well managed, its pressure will be light, and heavy only in case its management has been bad. If, therefore, it shall produce distress, the fault will be its own." Sir, this is all no more than general statement, without fact or argument to support it. We know what the management of the bank has been, and we know the present state of its affairs. We can judge, therefore, whether it be probable that its capital can be all called in, and the circulation of its bills withdrawn, in three years and nine months, by any discretion or prudence in management, without producing distress. The bank has discounted liberally, in compliance with the wants of the community. The amount due to it on loans and discounts, in certain large divisions of the country, is great; so great, that I do not perceive how any man can believe that it can be paid, within the time now limited, without distress. Let us look at known facts. Thirty millions of the capital of the bank are now out, on loans and discounts, in the States on the Mississippi and its waters; ten millions of which are loaned on the discount of bills of exchange, foreign and domestic, and twenty millions on promissory notes. Now, Sir, how is it possible that this vast amount can be collected in so short a period without suffering, by any management whatever? We are to remember, that, when the collection of this debt begins, at that same time, the existing medium of payment, that is, the circulation of the bills of the bank, will begin also to be restrained and withdrawn; and thus the means of payment must be limited just when the necessity of making payment becomes pressing. The whole debt is to be paid, and within the same time the whole circulation withdrawn.

The local banks, where there are such, will be able to afford little assistance; because they themselves will feel a full share

of the pressure. They will not be in a condition to extend their discounts, but, in all probability, obliged to curtail them. Whence, then, are the means to come for paying this debt? and in what medium is payment to be made? If all this may be done with but slight pressure on the community, what course of conduct is to accomplish it? How is it to be done? What other thirty millions are to supply the place of these thirty millions now to be called in? What other circulation or medium of payment is to be adopted in the place of the bills of the bank? The message, following a singular train of argument, which had been used in this house, has a loud lamentation upon the suffering of the Western States on account of their being obliged to pay even interest on this debt. This payment of interest is itself represented as exhausting their means and ruinous to their prosperity. But if the interest cannot be paid without pressure, can both interest and principal be paid in four years without pressure? The truth is, the interest has been paid, is paid, and may continue to be paid, without any pressure at all; because the money borrowed is profitably employed by those who borrow it, and the rate of interest which they pay is at least two per cent. lower than the actual value of money in that part of the country. But to pay the whole principal in less than four years, losing, at the same time, the existing and accustomed means and facilities of payment created by the bank itself, and to do this without extreme embarrassment, without absolute distress, is, in my judgment, impossible. I hesitate not to say, that, as this *veto* travels to the West, it will depreciate the value of every man's property from the Atlantic States to the capital of Missouri. Its effects will be felt in the price of lands, the great and leading article of Western property, in the price of crops, in the products of labor, in the repression of enterprise, and in embarrassment to every kind of business and occupation. I state this opinion strongly, because I have no doubt of its truth, and am willing its correctness should be judged by the event. Without personal acquaintance with the Western States, I know enough of their condition to be satisfied that what I have predicted must happen. The people of the West are rich, but their riches consist in their immense quantities of excellent land, in the products of these lands, and in their spirit of enterprise. The actual value of money, or rate of interest,

with them is high, because their pecuniary capital bears little proportion to their landed interest. At an average rate, money is not worth less than eight per cent. per annum throughout the whole Western country, notwithstanding that it has now a loan or an advance from the bank of thirty millions, at six per cent. To call in this loan, at the rate of eight millions a year, in addition to the interest on the whole, and to take away, at the same time, that circulation which constitutes so great a portion of the medium of payment throughout that whole region, is an operation, which, however wisely conducted, cannot but inflict a blow on the community of tremendous force and frightful consequences. The thing cannot be done without distress, bankruptcy, and ruin, to many. If the President had seen any practical manner in which this change might be effected without producing these consequences, he would have rendered infinite service to the community by pointing it out. But he has pointed out nothing, he has suggested nothing; he contents himself with saying, without giving any reason, that, if the pressure be heavy, the fault will be the bank's. I hope this is not merely an attempt to forestall opinion, and to throw on the bank the responsibility of those evils which threaten the country, for the sake of removing it from himself.

The responsibility justly lies with him, and there it ought to remain. A great majority of the people are satisfied with the bank as it is, and desirous that it should be continued. They wished no change. The strength of this public sentiment has carried the bill through Congress, against all the influence of the administration, and all the power of organized party. But the President has undertaken, on his own responsibility, to arrest the measure, by refusing his assent to the bill. He is answerable for the consequences, therefore, which necessarily follow the change which the expiration of the bank charter may produce; and if these consequences shall prove disastrous, they can fairly be ascribed to his policy only, and the policy of his administration.

Although, Sir, I have spoken of the effects of this *veto* in the Western country, it has not been because I considered that part of the United States exclusively affected by it. Some of the Atlantic States may feel its consequences, perhaps, as sensibly as those of the West, though not for the same reasons. The

concern manifested by Pennsylvania for the renewal of the charter shows her sense of the importance of the bank to her own interest, and that of the nation. That great and enterprising State has entered into an extensive system of internal improvements, which necessarily makes heavy demands on her credit and her resources; and by the sound and acceptable currency which the bank affords, by the stability which it gives to private credit, and by occasional advances, made in anticipation of her revenues, and in aid of her great objects, she has found herself benefitted, doubtless, in no inconsiderable degree. Her legislature has instructed her Senators here to advocate the renewal of the charter, at this session. They have obeyed her voice, and yet they have the misfortune to find that, in the judgment of the President, *the measure is unconstitutional, unnecessary, dangerous to liberty, and is, moreover, ill-timed.*

But, Mr. President, it is not the local interest of the West, nor the particular interest of Pennsylvania, or any other State, which has influenced Congress in passing this bill. It has been governed by a wise foresight, and by a desire to avoid embarrassment in the pecuniary concerns of the country, to secure the safe collection and convenient transmission of public moneys, to maintain the circulation of the country, sound and safe as it now happily is, against the possible effects of a wild spirit of speculation. Finding the bank highly useful, Congress has thought fit to provide for its continuance.

As to the *time* of passing this bill, it would seem to be the last thing to be thought of, as a ground of objection, by the President; since, from the date of his first message to the present time, he has never failed to call our attention to the subject with all possible apparent earnestness. So early as December, 1829, in his message to the two houses, he declares, that he "cannot, in justice to the parties interested, too soon present the subject to the deliberate consideration of the legislature, in order to avoid the evils resulting from precipitancy, in a measure involving such important principles and such deep pecuniary interests." Aware of this early invitation given to Congress to take up the subject, by the President himself, the writer of the message seems to vary the ground of objection, and, instead of complaining that the time of bringing forward this measure was premature, to insist, rather, that, after the report of the commit-

tee of the other house, the bank should have withdrawn its application for the present! But that report offers no just ground, surely, for such withdrawal. The subject was before Congress; it was for Congress to decide upon it, with all the light shed by the report; and the question of postponement, having been made in both houses, was lost, by clear majorities, in each. Under such circumstances, it would have been somewhat singular, to say the least, if the bank itself had withdrawn its application. It is indeed known to every body, that neither the report of the committee, nor any thing contained in that report, was relied on by the opposers of the renewal. If it has been discovered elsewhere, that that report contained matter important in itself, or which should have led to further inquiry, this may be proof of superior sagacity; for certainly no such thing was discerned by either House of Congress.

But, Sir, do we not now see that it was time, and high time, to press this bill, and to send it to the President? Does not the event teach us, that the measure was not brought forward one moment too early? The time had come when the people wished to know the decision of the administration on the question of the bank. Why conceal it, or postpone its declaration? Why, as in regard to the tariff, give out one set of opinions for the North, and another for the South.

An important election is at hand, and the renewal of the bank charter is a pending object of great interest, and some excitement. Should not the opinions of men high in office, and candidates for reëlection, be known, on this, as on other important public questions? Certainly, it is to be hoped that the people of the United States are not yet mere man-worshippers, that they do not choose their rulers without some regard to their political principles, or political opinions. Were they to do this, it would be to subject themselves voluntarily to the evils which the hereditary transmission of power, independent of all personal qualifications, inflicts on other nations. They will judge their public servants by their acts, and continue or withhold their confidence, as they shall think it merited, or as they shall think it forfeited. In every point of view, therefore, the moment had arrived, when it became the duty of Congress to come to a result, in regard to this highly important measure. The interests of the government, the interests of the people, the clear and indisputable voice

of public opinion, all called upon Congress to act without further loss of time. It has acted, and its act has been negatived by the President; and this result of the proceedings here places the question, with all its connections and all its incidents, fully before the people.

Before proceeding to the constitutional question, there are some other topics, treated in the message, which ought to be noticed. It commences by an inflamed statement of what it calls the "favor" bestowed upon the original bank by the government, or, indeed, as it is phrased, the "monopoly of its favor and support"; and through the whole message all possible changes are rung on the "gratuity," the "exclusive privileges," and "monopoly," of the bank charter. Now, Sir, the truth is, that the powers conferred on the bank are such, and no others, as are usually conferred on similar institutions. They constitute no monopoly, although some of them are of necessity, and with propriety, exclusive privileges. "The original act," says the message, "operated as a gratuity of many millions to the stockholders." What fair foundation is there for this remark? The stockholders received their charter, not gratuitously, but for a valuable consideration in money, prescribed by Congress, and actually paid. At some times the stock has been above *par*, at other times below *par*, according to prudence in management, or according to commercial occurrences. But if, by a judicious administration of its affairs, it had kept its stock always above *par*, what pretence would there be, nevertheless, for saying that such augmentation of its value was a "gratuity" from government? The message proceeds to declare, that the present act proposes another donation, another gratuity, to the same men, of at least seven millions more. It seems to me that this is an extraordinary statement, and an extraordinary style of argument, for such a subject and on such an occasion. In the first place, the facts are all assumed; they are taken for true without evidence. There are no proofs that any benefit to that amount will accrue to the stockholders, nor any experience to justify the expectation of it. It rests on random estimates, or mere conjecture. But suppose the continuance of the charter should prove beneficial to the stockholders; do they not pay for it? They give twice as much for a charter of fifteen years, as was given before for one of twenty. And if the proposed *bonus*, or premium, be not, in the

President's judgment, large enough, would he, nevertheless, on such a mere matter of opinion as that, negative the whole bill? May not Congress be trusted to decide even on such a subject as the amount of the money premium to be received by government for a charter of this kind?

But, Sir, there is a larger and a much more just view of this subject. The bill was not passed for the purpose of benefiting the present stockholders. Their benefit, if any, is incidental and collateral. Nor was it passed on any idea that they had a *right* to a renewed charter, although the message argues against such right, as if it had been somewhere set up and asserted. No such right has been asserted by any body. Congress passed the bill, not as a bounty or a favor to the present stockholders, nor to comply with any demand of right on their part; but to promote great public interests, for great public objects. Every bank must have some stockholders, unless it be such a bank as the President has recommended, and in regard to which he seems not likely to find much concurrence of other men's opinions; and if the stockholders, whoever they may be, conduct the affairs of the bank prudently, the expectation is always, of course, that they will make it profitable to themselves, as well as useful to the public. If a bank charter is not to be granted, because, to some extent, it may be profitable to the stockholders, no charter can be granted. The objection lies against all banks.

Sir, the object aimed at by such institutions is to connect the public safety and convenience with private interests. It has been found by experience, that banks are safest under private management, and that government banks are among the most dangerous of all inventions. Now, Sir, the whole drift of the message is to reverse the settled judgment of all the civilized world, and to set up government banks, independent of private interest or private control. For this purpose the message labors, even beyond the measure of all its other labors, to create jealousies and prejudices, on the ground of the alleged benefit which individuals will derive from the renewal of this charter. Much less effort is made to show that government, or the public, will be injured by the bill, than that individuals will profit by it. Following up the impulses of the same spirit, the message goes on gravely to allege, that the act, as passed by Congress, proposes to make a *present* of some millions of dollars to foreigners

because a portion of the stock is held by foreigners. Sir, how would this sort of argument apply to other cases? The President has shown himself not only willing, but anxious, to pay off the three per cent. stock of the United States at *par*, notwithstanding that it is notorious that foreigners are owners of the greater part of it. Why should he not call that a donation to foreigners of many millions?

I will not dwell particularly on this part of the message. Its tone and its arguments are all in the same strain. It speaks of the certain gain of the present stockholders, of the value of the monopoly; it says that all monopolies are granted at the expense of the public; that the many millions which this bill bestows on the stockholders come out of the earnings of the people; that, if government sells monopolies, it ought to sell them in open market; that it is an erroneous idea, that the present stockholders have a prescriptive right either to the favor or the bounty of government; that the stock is in the hands of a few, and that the whole American people are excluded from competition in the purchase of the monopoly. To all this I say, again, that much of it is assumption without proof; much of it is an argument against that which nobody has maintained or asserted; and the rest of it would be equally strong against any charter, at any time. These objections existed in their full strength, whatever that was, against the first bank. They existed, in like manner, against the present bank at its creation, and will always exist against all banks. Indeed, all the fault found with the bill now before us is, that it proposes to continue the bank substantially as it now exists. "All the objectionable principles of the existing corporation," says the message, "and most of its odious features, are retained without alleviation"; so that the message is aimed against the bank, as it has existed from the first, and against any and all others resembling it in its general features.

Allow me, now, Sir, to take notice of an argument founded on the practical operation of the bank. That argument is this. Little of the stock of the bank is held in the West, the capital being chiefly owned by citizens of the Southern and Eastern States, and by foreigners. But the Western and Southwestern States owe the bank a heavy debt, so heavy that the interest amounts to a million six hundred thousand a year. This inter-

est is carried to the Eastern States, or to Europe, annually, and its payment is a burden on the people of the West, and a drain of their currency, which no country can bear without inconvenience and distress. The true character and the whole value of this argument are manifest by the mere statement of it. The people of the West are, from their situation, necessarily large borrowers. They need money, capital, and they borrow it, because they can derive a benefit from its use, much beyond the interest which they pay. They borrow at six per cent. of the bank, although the value of money with them is at least as high as eight. Nevertheless, although they borrow at this low rate of interest, and although they use all they borrow thus profitably, yet they cannot pay the interest without "inconvenience and distress"; and then, Sir, follows the logical conclusion, that, although they cannot pay even the interest without inconvenience and distress, yet less than four years is ample time for the bank to call in the whole, both principal and interest, without causing more than a light pressure. This is the argument.

Then follows another, which may be thus stated. It is competent to the States to tax the property of their citizens vested in the stock of this bank; but the power is denied of taxing the stock of foreigners; therefore the stock will be worth ten or fifteen per cent. more to foreigners than to residents, and will of course inevitably leave the country, and make the American people debtors to aliens in nearly the whole amount due the bank, and send across the Atlantic from two to five millions of specie every year, to pay the bank dividends.

Mr. President, arguments like these might be more readily disposed of, were it not that the high and official source from which they proceed imposes the necessity of treating them with respect. In the first place, it may safely be denied that the stock of the bank is any more valuable to foreigners than to our own citizens, or an object of greater desire to them, except in so far as capital may be more abundant in the foreign country, and therefore its owners more in want of opportunity of investment. The foreign stockholder enjoys no exemption from taxation. He is, of course, taxed by his own government for his incomes, derived from this as well as other property; and this is a full answer to the whole statement. But it may be added, in the

second place, that it is not the practice of civilized states to tax the property of foreigners under such circumstances. Do we tax, or did we ever tax, the foreign holders of our public debt? Does Pennsylvania, New York, or Ohio tax the foreign holders of stock in the loans contracted by either of these States? Certainly not. Sir, I must confess I had little expected to see, on such an occasion as the present, a labored and repeated attempt to produce an impression on the public opinion unfavorable to the bank, from the circumstance that foreigners are among its stockholders. I have no hesitation in saying, that I deem such a train of remark as the message contains on this point, coming from the President of the United States, to be injurious to the credit and character of the country abroad; because it manifests a jealousy, a lurking disposition not to respect the property, of foreigners invited hither by our own laws. And, Sir, what is its tendency but to excite this jealousy, and create groundless prejudices?

From the commencement of the government, it has been thought desirable to invite, rather than to repel, the introduction of foreign capital. Our stocks have all been open to foreign subscriptions; and the State banks, in like manner, are free to foreign ownership. Whatever State has created a debt has been willing that foreigners should become purchasers, and desirous of it. How long is it, Sir, since Congress itself passed a law vesting new powers in the President of the United States over the cities in this District, for the very purpose of increasing their credit abroad, the better to enable them to borrow money to pay their subscriptions to the Chesapeake and Ohio Canal? It is easy to say that there is danger to liberty, danger to independence, in a bank open to foreign stockholders, because it is easy to say any thing. But neither reason nor experience proves any such danger. The foreign stockholder cannot be a director. He has no voice even in the choice of directors. His money is placed entirely in the management of the directors appointed by the President and Senate and by the American stockholders. So far as there is dependence or influence either way, it is to the disadvantage of the foreign stockholder. He has parted with the control over his own property, instead of exercising control over the property or over the actions of others. And, Sir, let it now be added, in further answer to this class of objec-

tions, that experience has abundantly confuted them all. This government has existed forty-three years, and has maintained, in full being and operation, a bank, such as is now proposed to be renewed, for thirty-six years out of the forty-three. We have never for a moment had a bank not subject to every one of these objections. Always, foreigners might be stockholders; always, foreign stock has been exempt from State taxation, as much as at present; always, the same power and privileges; always, all that which is now called a "monopoly," a "gratuity," a "present," have been possessed by the bank. And yet there has been found no danger to liberty, no introduction of foreign influence, and no accumulation of irresponsible power in a few hands. I cannot but hope, therefore, that the people of the United States will not now yield up their judgment to those notions which would reverse all our best experience, and persuade us to discontinue a useful institution from the influence of vague and unfounded declamation against its danger to the public liberties. Our liberties, indeed, must stand upon very frail foundations, if the government cannot, without endangering them, avail itself of those common facilities, in the collection of its revenues and the management of its finances, which all other governments, in commercial countries, find useful and necessary.

In order to justify its alarm for the security of our independence, the message supposes a case. It supposes that the bank should pass principally into the hands of the subjects of a foreign country, and that we should be involved in war with that country, and then it exclaims, "What would be our condition?" Why, Sir, it is plain that all the advantages would be on our side. The bank would still be our institution, subject to our own laws, and all its directors elected by ourselves; and our means would be enhanced, not by the confiscation and plunder, but by the proper use, of the foreign capital in our hands. And, Sir, it is singular enough, that this very state of war, from which this argument against a bank is drawn, is the very thing which, more than all others, convinced the country and the government of the necessity of a national bank. So much was the want of such an institution felt in the late war, that the subject engaged the attention of Congress, constantly, from the declaration of that war down to the time when the existing bank was actually

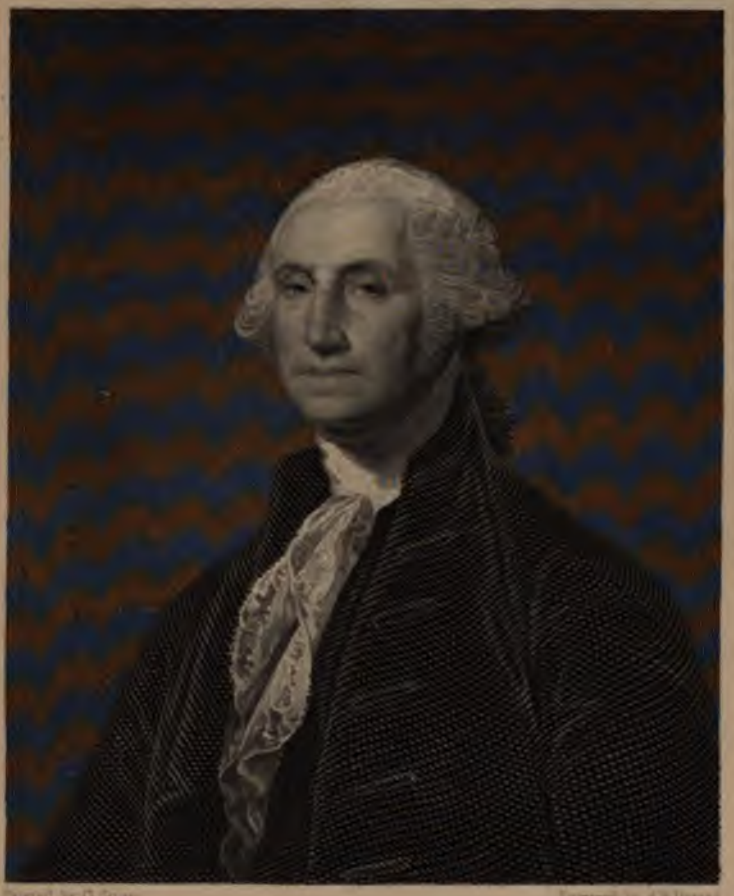
established; so that in this respect, as well as in others, the argument of the message is directly opposed to the whole experience of the government, and to the general and long-settled convictions of the country.

I now proceed, Sir, to a few remarks upon the President's constitutional objections to the bank; and I cannot forbear to say, in regard to them, that he appears to me to have assumed very extraordinary grounds of reasoning. He denies that the constitutionality of the bank is a settled question. If it be not, will it ever become so, or what disputed question ever can be settled? I have already observed, that for thirty-six years out of the forty-three during which the government has been in being, a bank has existed, such as is now proposed to be continued.

As early as 1791, after great deliberation, the first bank charter was passed by Congress, and approved by President Washington. It established an institution, resembling, in all things now objected to, the present bank. That bank, like this, could take lands in payment of its debts; that charter, like the present, gave the States no power of taxation; it allowed foreigners to hold stock; it restrained Congress from creating other banks. It gave also exclusive privileges, and in all particulars it was, according to the doctrine of the message, as objectionable as that now existing. That bank continued twenty years. In 1816, the present institution was established, and has been ever since in full operation. Now, Sir, the question of the power of Congress to create such institutions has been contested in every manner known to our Constitution and laws. The forms of the government furnish no new mode in which to try this question. It has been discussed over and over again, in Congress; it has been argued and solemnly adjudged in the Supreme Court; every President, except the present, has considered it a settled question; many of the State legislatures have instructed their Senators to vote for the bank; the tribunals of the States, in every instance, have supported its constitutionality; and, beyond all doubt and dispute, the general public opinion of the country has at all times given, and does now give, its full sanction and approbation to the exercise of this power, as being a constitutional power. There has been no opinion questioning the power expressed or intimated, at any time, by either house

George Washington

Engraved by A. B. Durand from the Painting by Gilbert Stuart



Painted by G. Stuart. Engraved by A.B. Durand.

of Congress, by any President, or by any respectable judicial tribunal. Now, Sir, if this practice of near forty years, if these repeated exercises of the power, if this solemn adjudication of the Supreme Court, with the concurrence and approbation of public opinion, do not settle the question, how is any question ever to be settled, about which any one may choose to raise a doubt?

The argument of the message upon the Congressional precedents is either a bold and gross fallacy, or else it is an assertion without proofs, and against known facts. The message admits, that, in 1791, Congress decided in favor of a bank; but it adds, that another Congress, in 1811, decided against it. Now, if it be meant that, in 1811, Congress decided against the bank on constitutional ground, then the assertion is wholly incorrect, and against notorious fact. It is perfectly well known, that many members, in both houses, voted against the bank in 1811, who had no doubt at all of the constitutional power of Congress. They were entirely governed by other reasons given at the time. I appeal, Sir, to the honorable member from Maryland, who was then a member of the Senate, and voted against the bank, whether he, and others who were on the same side, did not give those votes on other well-known grounds, and not at all on constitutional ground?

General Smith here rose, and said, that he voted against the bank in 1811, but not at all on constitutional grounds, and had no doubt such was the case with other members.

We all know, Sir, the fact to be as the gentleman from Maryland has stated it. Every man who recollects, or who has read, the political occurrences of that day, knows it. Therefore, if the message intends to say, that in 1811 Congress denied the existence of any such constitutional power, the declaration is unwarranted, and altogether at variance with the facts. If, on the other hand, it only intends to say, that Congress decided against the proposition then before it on some other grounds, then it alleges that which is nothing at all to the purpose. The argument, then, either assumes for truth that which is not true, or else the whole statement is immaterial and futile.

But whatever value others may attach to this argument, the message thinks so highly of it, that it proceeds to repeat it.

"One Congress," it says, "in 1815, decided against a bank; another, in 1816, decided in its favor. There is nothing in precedent, therefore, which, if its authority were admitted, ought to weigh in favor of the act before me." Now, Sir, since it is known to the whole country, one cannot but wonder how it should remain unknown to the President, that Congress *did not* decide against a bank in 1815. On the contrary, that very Congress passed a bill for erecting a bank, by very large majorities. In one form, it is true, the bill failed in the House of Representatives; but the vote was reconsidered, the bill recommitted, and finally passed by a vote of one hundred and twenty to thirty-nine. There is, therefore, not only no solid ground, but not even any plausible pretence, for the assertion, that Congress in 1815 decided against the bank. That very Congress passed a bill to create a bank, and its decision, therefore, is precisely the other way, and is a direct practical precedent in favor of the constitutional power. What are we to think of a constitutional argument which deals in this way with historical facts? When the message declares, as it does declare, that there is nothing in precedent which ought to weigh in favor of the power, it sets at naught repeated acts of Congress affirming the power, and it also states other acts, which were in fact, and which are well known to have been, directly the reverse of what the message represents them. There is not, Sir, the slightest reason to think that any Senate or any House of Representatives, ever assembled under the Constitution, contained a majority that doubted the constitutional existence of the power of Congress to establish a bank. Whenever the question has arisen, and has been decided, it has always been decided one way. The legislative precedents all assert and maintain the power; and these legislative precedents have been the law of the land for almost forty years. They settle the construction of the Constitution, and sanction the exercise of the power in question, so far as these effects can ever be produced by any legislative precedents whatever.

But the President does not admit the authority of precedent. Sir, I have always found, that those who habitually deny most vehemently the general force of precedent, and assert most strongly the supremacy of private opinion, are yet, of all men, most tenacious of that very authority of precedent, whenever it

happens to be in their favor. I beg leave to ask, Sir, upon what ground, except that of precedent, and precedent alone, the President's friends have placed his power of removal from office. No such power is given by the Constitution, in terms, nor anywhere intimated, throughout the whole of it; no paragraph or clause of that instrument recognizes such a power. To say the least, it is as questionable, and has been as often questioned, as the power of Congress to create a bank; and, enlightened by what has passed under our own observation, we now see that it is of all powers the most capable of flagrant abuse. Now, Sir, I ask again, What becomes of this power, if the authority of precedent be taken away? It has all along been denied to exist; it is nowhere found in the Constitution; and its recent exercise, or, to call things by their right names, its recent abuse, has, more than any other single cause, rendered good men either cool in their affections toward the government of their country, or doubtful of its long continuance. Yet there is *precedent* in favor of this power, and the President exercises it. We know, Sir, that, without the aid of that *precedent*, his acts could never have received the sanction of this body, even at a time when his voice was somewhat more potential here than it now is, or, as I trust, ever again will be. Does the President, then, reject the authority of all precedent except what it is suitable to his own purpose to use? And does he use, without stint or measure, all precedents which may augment his own power, or gratify his own wishes?

But if the President thinks lightly of the authority of Congress in construing the Constitution, he thinks still more lightly of the authority of the Supreme Court. He asserts a right of individual judgment on constitutional questions, which is totally inconsistent with any proper administration of the government, or any regular execution of the laws. Social disorder, entire uncertainty in regard to individual rights and individual duties, the cessation of legal authority, confusion, the dissolution of free government, — all these are the inevitable consequences of the principles adopted by the message, whenever they shall be carried to their full extent. Hitherto it has been thought that the final decision of constitutional questions belonged to the supreme judicial tribunal. The very nature of free government, it has been supposed, enjoins this; and our Constitution, more-

over, has been understood so to provide, clearly and expressly. It is true, that each branch of the legislature has an undoubted right, in the exercise of its functions, to consider the constitutionality of a law proposed to be passed. This is naturally a part of its duty; and neither branch can be compelled to pass any law, or do any other act, which it deems to be beyond the reach of its constitutional power. The President has the same right, when a bill is presented for his approval, for he is, doubtless, bound to consider, in all cases, whether such bill be compatible with the Constitution, and whether he can approve it consistently with his oath of office. But when a law has been passed by Congress, and approved by the President, it is now no longer in the power, either of the same President, or his successors, to say whether the law is constitutional or not. He is not at liberty to disregard it; he is not at liberty to feel or to affect "constitutional scruples," and to sit in judgment himself on the validity of a statute of the government, and to nullify it, if he so chooses. After a law has passed through all the requisite forms; after it has received the requisite legislative sanction and the executive approval, the question of its constitutionality then becomes a judicial question, and a judicial question alone. In the courts that question may be raised, argued, and adjudged; it can be adjudged nowhere else.

The President is as much bound by the law as any private citizen, and can no more contest its validity than any private citizen. He may refuse to obey the law, and so may a private citizen; but both do it at their own peril, and neither of them can settle the question of its validity. The President may *say* a law is unconstitutional, but he is not the judge. Who is to decide that question? The judiciary alone possesses this unquestionable and hitherto unquestioned right. The judiciary is the constitutional tribunal of appeal for the citizens, against both Congress and the executive, in regard to the constitutionality of laws. It has this jurisdiction expressly conferred upon it, and when it has decided the question, its judgment must, from the very nature of all judgments that are final, and from which there is no appeal, be conclusive. Hitherto, this opinion, and a correspondent practice, have prevailed, in America, with all wise and considerate men. If it were otherwise, there would be no

government of laws; but we should all live under the government, the rule, the caprices, of individuals. If we depart from the observance of these salutary principles, the executive power becomes at once purely despotic; for the President, if the principle and the reasoning of the message be sound, may either execute or not execute the laws of the land, according to his sovereign pleasure. He may refuse to put into execution one law, pronounced valid by all branches of the government, and yet execute another, which may have been by constitutional authority pronounced void.

On the argument of the message, the President of the United States holds, under a new pretence and a new name, a *dispensing power* over the laws as absolute as was claimed by James the Second of England, a month before he was compelled to fly the kingdom. That which is now claimed by the President is in truth nothing less, and nothing else, than the old dispensing power asserted by the kings of England in the worst of times; the very climax, indeed, of all the preposterous pretensions of the Tudor and the Stuart races. According to the doctrines put forth by the President, although Congress may have passed a law, and although the Supreme Court may have pronounced it constitutional, yet it is, nevertheless, no law at all, if he, in his good pleasure, sees fit to deny it effect; in other words, to repeal and annul it. Sir, no President and no public man ever before advanced such doctrines in the face of the nation. There never before was a moment in which any President would have been tolerated in asserting such a claim to despotic power. After Congress has passed the law, and after the Supreme Court has pronounced its judgment on the very point in controversy, the President has set up his own private judgment against its constitutional interpretation. It is to be remembered, Sir, that it is the present law, it is the act of 1816, it is the present charter of the bank, which the President pronounces to be unconstitutional. It is no bank *to be created*, it is no law proposed to be passed, which he denounces; it is the *law now existing*, passed by Congress, approved by President Madison, and sanctioned by a solemn judgment of the Supreme Court, which he now declares unconstitutional, and which, of course, so far as it may depend on him, cannot be executed. If these opinions of the President be maintained, there is an end of all law and all judicial author-

ity. Statutes are but recommendations, judgments no more than opinions. Both are equally destitute of binding force. Such a universal power as is now claimed for him, a power of judging over the laws and over the decisions of the judiciary, is nothing else but pure despotism. If conceded to him, it makes him at once what Louis the Fourteenth proclaimed himself to be when he said, "I am the State."

The Supreme Court has unanimously declared and adjudged that the existing bank *is* created by a constitutional law of Congress. As has been before observed, this bank, so far as the present question is concerned, is like that which was established in 1791 by Washington, and sanctioned by the great men of that day. In every form, therefore, in which the question can be raised, it has been raised and has been settled. Every process and every mode of trial known to the Constitution and laws have been exhausted, and always and without exception the decision has been in favor of the validity of the law. But all this practice, all this precedent, all this public approbation, all this solemn adjudication directly on the point, is to be disregarded and rejected, and the constitutional power flatly denied. And, Sir, if we are startled at this conclusion, our surprise will not be lessened when we examine the argument by which it is maintained.

By the Constitution, Congress is authorized to pass all laws "necessary and proper" for carrying its own legislative powers into effect. Congress has deemed a bank to be "necessary and proper" for these purposes, and it has therefore established a bank. But although the law has been passed, and the bank established, and the constitutional validity of its charter solemnly adjudged, yet the President pronounces it unconstitutional, because some of the powers bestowed on the bank are, in his opinion, not necessary or proper. It would appear that powers which in 1791 and in 1816, in the time of Washington and in the time of Madison, were deemed "necessary and proper," are no longer to be so regarded, and therefore the bank is unconstitutional. It has really come to this, that the constitutionality of a bank is to depend upon the opinion which one particular man may form of the utility or necessity of some of the clauses in its charter! If that individual chooses to think that a particular power contained in the charter is not necessary

to the proper constitution of the bank, then the act is unconstitutional!

Hitherto it has always been supposed that the question was of a very different nature. It has been thought that the policy of granting a particular charter may be materially dependent on the structure and organization and powers of the proposed institution. But its general constitutionality has never before been understood to turn on such points. This would be making its constitutionality depend on subordinate questions; on questions of expediency and questions of detail; upon that which one man may think necessary, and another may not. If the constitutional question were made to hinge on matters of this kind, how could it ever be decided? All would depend on conjecture; on the complexional feeling, on the prejudices, on the passions, of individuals; on more or less practical skill or correct judgment in regard to banking operations among those who should be the judges; on the impulse of momentary interests, party objects, or personal purposes. Put the question in this manner to a court of seven judges, to decide whether a particular bank was constitutional, and it might be doubtful whether they could come to any result, as they might well hold very various opinions on the practical utility of many clauses of the charter.

The question in that case would be, not whether the bank, in its general frame, character, and objects, was a proper instrument to carry into effect the powers of the government, but whether the particular powers, direct or incidental, conferred on a particular bank, were better calculated than all others to give success to its operations. For if not, then the charter, according to this sort of reasoning, would be unwarranted by the Constitution. This mode of construing the Constitution is certainly a novel discovery. Its merits belong entirely to the President and his advisers. According to this rule of interpretation, if the President should be of opinion, that the capital of the bank was larger, by a thousand dollars, than it ought to be; or that the time for the continuance of the charter was a year too long; or that it was unnecessary to require it, under penalty, to pay specie; or needless to provide for punishing, as forgery, the counterfeiting of its bills, — either of these reasons would be sufficient to render the charter, in his opinion, unconstitutional, in-

valid, and nugatory. This is a legitimate conclusion from the argument. Such a view of the subject has certainly never before been taken. This train of reasoning has hitherto not been heard within the halls of Congress, nor has any one ventured upon it before the tribunals of justice. The first exhibition, its first appearance, as an argument, is in a message of the President of the United States.

According to that mode of construing the Constitution which was adopted by Congress in 1791, and approved by Washington, and which has been sanctioned by the judgment of the Supreme Court, and affirmed by the practice of nearly forty years, the question upon the constitutionality of the bank involves two inquiries. First, whether a bank, in its general character, and with regard to the general objects with which banks are usually connected, be, in itself, a fit means, a suitable instrument, to carry into effect the powers granted to the government. If it be so, then the second, and the only other question is, whether the powers given in a particular charter are appropriate for a bank. If they are powers which are appropriate for a bank, powers which Congress may fairly consider to be useful to the bank or the country, then Congress may confer these powers; because the discretion to be exercised in framing the constitution of the bank belongs to Congress. One man may think the granted powers not indispensable to the particular bank; another may suppose them injudicious, or injurious; a third may imagine that other powers, if granted in their stead, would be more beneficial; but all these are matters of expediency, about which men may differ; and the power of deciding upon them belongs to Congress.

I again repeat, Sir, that if, for reasons of this kind, the President sees fit to negative a bill, on the ground of its being inexpedient or impolitic, he has a right to do so. But remember, Sir, that we are now on the constitutional question; remember, that the argument of the President is, that, because powers were given to the bank by the charter of 1816 which he thinks unnecessary, that charter is unconstitutional. Now, Sir, it will hardly be denied, or rather it was not denied or doubted before this message came to us, that, if there was to be a bank, the powers and duties of that bank must be prescribed in the law creating it. Nobody but Congress, it has been thought, could

grant these powers and privileges, or prescribe their limitations. It is true, indeed, that the message pretty plainly intimates, that the President should have been *first* consulted, and that he should have had the framing of the bill; but we are not yet accustomed to that order of things in enacting laws, nor do I know a parallel to this claim, thus now brought forward, except that, in some peculiar cases in England, highly affecting the royal prerogative, the assent of the monarch is necessary, before either the House of Peers, or his Majesty's faithful Commons, are permitted to act upon the subject, or to entertain its consideration. But supposing, Sir, that our accustomed forms and our republican principles are still to be followed, and that a law creating a bank is, like all other laws, to originate with Congress, and that the President has nothing to do with it till it is presented for his approval, then it is clear that the powers and duties of a proposed bank, and all the terms and conditions annexed to it, must, in the first place, be settled by Congress.

This power, if constitutional at all, is only constitutional in the hands of Congress. Anywhere else, its exercise would be plain usurpation. If, then, the authority to decide what powers ought to be granted to a bank belong to Congress, and Congress shall have exercised that power, it would seem little better than absurd to say, that its act, nevertheless, would be unconstitutional and invalid, if, in the opinion of a third party, it had misjudged, on a question of expediency, in the arrangement of details. According to such a mode of reasoning, a mistake in the exercise of jurisdiction takes away the jurisdiction. If Congress decide right, its decision may stand; if it decide wrong, its decision is nugatory; and whether its decision be right or wrong another is to judge, although the original power of making the decision must be allowed to be exclusively in Congress. This is the end to which the argument of the message will conduct its followers.

Sir, in considering the authority of Congress to invest the bank with the particular powers granted to it, the inquiry is not, and cannot be, how appropriate these powers are, but whether they be at all appropriate; whether they come within the range of a just and honest discretion; whether Congress may fairly esteem them to be necessary. The question is not, Are they the fittest means, the best means? or whether the bank might

not be established without them; but the question is, Are they such as Congress, *bonâ fide*, may have regarded as appropriate to the end? If any other rule were to be adopted, nothing could ever be settled. A law would be constitutional to-day and unconstitutional to-morrow. Its constitutionality would altogether depend upon individual opinion on a matter of mere expediency. Indeed, such a case as that is now actually before us. Mr. Madison deemed the powers given to the bank, in its present charter, proper and necessary. He held the bank, therefore, to be constitutional. But the present President, not acknowledging that the power of deciding on these points rests with Congress, nor with Congress and the then President, but setting up his own opinion as the standard, declares the law now in being unconstitutional, because the powers granted by it are, in his estimation, not necessary and proper. I pray to be informed, Sir, whether, upon similar grounds of reasoning, the President's own scheme for a bank, if Congress should do so unlikely a thing as to adopt it, would not become unconstitutional also, if it should so happen that his successor should hold his bank in as light esteem as he holds those established under the auspices of Washington and Madison?

If the reasoning of the message be well founded, it is clear that the charter of the existing bank is not a law. The bank has no legal existence; it is not responsible to government; it has no authority to act; it is incapable of being an agent; the President may treat it as a nullity to-morrow, withdraw from it all the public deposits, and set afloat all the existing national arrangements of revenue and finance. It is enough to state these monstrous consequences, to show that the doctrine, principles, and pretensions of the message are entirely inconsistent with a government of laws. If that which Congress has enacted, and the Supreme Court has sanctioned, be not the law of the land, then the reign of law has ceased, and the reign of individual opinion has already begun.

The President, in his commentary on the details of the existing bank charter, undertakes to prove that one provision, and another provision, is not necessary and proper; because, as he thinks, the same objects proposed to be accomplished by them might have been better attained in another mode; and therefore

such provisions are not necessary, and so not warranted by the Constitution. Does not this show, that, according to his own mode of reasoning, his *own* scheme would not be constitutional, since another scheme, which probably most people would think a better one, might be substituted for it? Perhaps, in any bank charter, there may be no provisions which may be justly regarded as absolutely indispensable; since it is probable that for any of them some others might be substituted. No bank, therefore, ever could be established; because there never has been, and never could be, any charter, of which every provision should appear to be indispensable, or necessary and proper, in the judgment of every individual. To admit, therefore, that there may be a constitutional bank, and yet to contend for such a mode of judging of its provisions and details as the message adopts, involves an absurdity. Any charter which may be framed may be taken up, and each power conferred by it successively denied, on the ground, that, in regard to each, either no such power is "necessary or proper" in a bank, or, which is the same thing in effect, some other power might be substituted for it, and supply its place. That can never be necessary, in the sense in which the message understands that term, which may be dispensed with; and it cannot be said that any power may not be dispensed with, if there be some other which might be substituted for it, and which would accomplish the same end. Therefore, no bank could ever be constitutional, because none could be established which should not contain some provisions which might have been omitted, and their place supplied by others.

Mr. President, I have understood the true and well-established doctrine to be, that, after it has been decided that it is competent for Congress to establish a bank, then it follows, that it may create such a bank as it judges, in its discretion, to be best, and invest it with all such power as it may deem fit and suitable; with this limitation, always, that all is to be done in the *bonâ fide* execution of the power to create a bank. If the granted powers are appropriate to the professed end, so that the granting of them cannot be regarded as usurpation of authority by Congress, or an evasion of constitutional restrictions, under color of establishing a bank, then the charter is constitutional, whether these powers be thought indispensable by others or not, or whether even Congress itself deemed them absolutely indis-

pensable, or only thought them fit and suitable, or whether they are more or less appropriate to their end. It is enough that they are appropriate; it is enough that they are suited to produce the effects designed; and no comparison is to be instituted, in order to try their constitutionality, between them and others which may be suggested. A case analogous to the present is found in the constitutional power of Congress over the mail. The Constitution says no more than that "Congress shall have power to establish post-offices and post-roads"; and, in the general clause, "all powers necessary and proper" to give effect to this. In the execution of this power, Congress has protected the mail, by providing that robbery of it shall be punished with death. Is this infliction of capital punishment constitutional? Certainly it is not, unless it be both "proper and necessary." The President may not think it necessary or proper; the law, then, according to the system of reasoning enforced by the message, is of no binding force, and the President may disobey it, and refuse to see it executed.

The truth is, Mr. President, that if the general object, the subject-matter, properly belong to Congress, all its incidents belong to Congress also. If Congress is to establish post-offices and post-roads, it may, for that end, adopt one set of regulations or another; and either would be constitutional. So the details of one bank are as constitutional as those of another, if they are confined fairly and honestly to the purpose of organizing the institution, and rendering it useful. One *bank* is as constitutional as another *bank*. If Congress possesses the power to make a bank, it possesses the power to make it efficient, and competent to produce the good expected from it. It may clothe it with all such power and privileges, not otherwise inconsistent with the Constitution, as may be necessary, in its own judgment, to make it what government deems it should be. It may confer on it such immunities as may induce individuals to become stockholders, and to furnish the capital; and since the extent of these immunities and privileges is matter of discretion, and matter of opinion, Congress only can decide it, because Congress alone can frame or grant the charter. A charter, thus granted to individuals, becomes a contract with them, upon their compliance with its terms. The bank becomes an agent, bound to perform certain duties, and entitled to certain stipulated rights

and privileges, in compensation for the proper discharge of these duties; and all these stipulations, so long as they are appropriate to the object professed, and not repugnant to any other constitutional injunction, are entirely within the competency of Congress. And yet, Sir, the message of the President toils through all the commonplace topics of monopoly, the right of taxation, the suffering of the poor, and the arrogance of the rich, with as much painful effort, as if one, or another, or all of them, had something to do with the constitutional question.

What is called the "monopoly" is made the subject of repeated rehearsal, in terms of special complaint. By this "monopoly," I suppose, is understood the restriction contained in the charter, that Congress shall not, during the twenty years, create another bank. Now, Sir, let me ask, Who would think of creating a bank, inviting stockholders into it, with large investments, imposing upon it heavy duties, as connected with the government, receiving some millions of dollars as a *bonus* or premium, and yet retaining the power of granting, the next day, another charter, which would destroy the whole value of the first? If this be an unconstitutional restraint on Congress, the Constitution must be strangely at variance with the dictates both of good sense and sound morals. Did not the first Bank of the United States contain a similar restriction? And have not the States granted bank charters with a condition, that, if the charter should be accepted, they would not grant others? States have certainly done so; and, in some instances, where no *bonus* or premium was paid at all; but from the mere desire to give effect to the charter, by inducing individuals to accept it and organize the institution. The President declares that this restriction is not necessary to the efficiency of the bank; but that is the very thing which Congress and his predecessor in office were called on to decide, and which they did decide, when the one passed and the other approved the act. And he has now no more authority to pronounce his judgment on that act than any other individual in society. It is not his province to decide on the constitutionality of statutes which Congress has passed, and his predecessors approved.

There is another sentiment in this part of the message, which we should hardly have expected to find in a paper which is supposed, whoever may have drawn it up, to have passed under the

review of professional characters. The message declares, that this limitation to create no other bank is unconstitutional, because, although Congress may use the discretion vested in them, "they may not limit the discretion of their successors." This reason is almost too superficial to require an answer. Every one at all accustomed to the consideration of such subjects knows that every Congress can bind its successors to the same extent that it can bind itself. The power of Congress is always the same; the authority of law always the same. It is true, we speak of the Twentieth Congress and the Twenty-first Congress; but this is only to denote the period of time, or to mark the successive organizations of the House of Representatives under the successive periodical election of its members. As a politic body, as the legislative power of the government, Congress is always continuous, always identical. A particular Congress, as we speak of it, for instance, the present Congress, can no farther restrain itself from doing what it may choose to do at the next session, than it can restrain any succeeding Congress from doing what it may choose. Any Congress may repeal the act or law of its predecessor, if in its nature it be repealable, just as it may repeal its own act; and if a law or an act be irrepealable in its nature, it can no more be repealed by a subsequent Congress than by that which passed it. All this is familiar to every body. And Congress, like every other legislature, often passes acts which, being in the nature of grants or contracts, are irrepealable ever afterwards. The message, in a strain of argument which it is difficult to treat with ordinary respect, declares that this restriction on the power of Congress, as to the establishment of other banks, is a palpable attempt to amend the Constitution by an act of legislation. The reason on which this observation purports to be founded is, that Congress, by the Constitution, is to have exclusive legislation over the District of Columbia; and when the bank charter declares that Congress will create no new bank within the District, it annuls this power of exclusive legislation! I must say, that this reasoning hardly rises high enough to entitle it to a passing notice. It would be doing it too much credit to call it plausible. No one needs to be informed that exclusive power of legislation is not unlimited power of legislation; and if it were, how can that legislative power be unlimited that cannot restrain itself, that cannot bind

itself by contract? Whether as a government or as an individual, that being is fettered and restrained which is not capable of binding itself by ordinary obligation. Every legislature binds itself, whenever it makes a grant, enters into a contract, bestows an office, or does any other act or thing which is in its nature irrepealable. And this, instead of detracting from its legislative power, is one of the modes of exercising that power. The legislative power of Congress over the District of Columbia would not be full and complete, if it might not make just such a stipulation as the bank charter contains.

As to the taxing power of the States, about which the message says so much, the proper answer to all it says is, that the States possess no power to tax any instrument of the government of the United States. It was no part of their power before the Constitution, and they derive no such power from any of its provisions. It is nowhere given to them. Could a State tax the *coin* of the United States at the mint? Could a State lay a stamp tax on the process of the courts of the United States, and on custom-house papers? Could it tax the transportation of the mail, or the ships of war, or the ordnance, or the muniments of war, of the United States? The reason that these cannot be taxed by a State is, that they are means and instruments of the government of the United States. The establishment of a bank exempt from State taxation takes away no existing right in a State. It leaves it all it ever possessed. But the complaint is, that the bank charter does not *confer* the power of taxation. This, certainly, though not a new (for the same argument was urged here), appears to me to be a strange mode of asserting and maintaining State rights. The power of taxation is a sovereign power; and the President and those who think with him are of opinion, in a given case, that this sovereign power should be conferred on the States by an act of Congress. There is, if I mistake not, Sir, as little compliment to State sovereignty in this idea, as there is of sound constitutional doctrine. Sovereign rights held under the grant of an act of Congress present a proposition quite new in constitutional law.

The President himself even admits that an instrument of the government of the United States ought not, as such, to be taxed by the States; yet he contends for such a power of taxing prop-

erty connected with this instrument, and essential to its very being, as places its whole existence in the pleasure of the States. It is not enough that the States may tax all the property of all their own citizens, wherever invested or however employed. The complaint is, that the power of State taxation does not reach so far as to take cognizance over persons out of the State, and to tax them for a franchise lawfully exercised under the authority of the United States. Sir, when did the power of the States, or indeed of any government, go to such an extent as that? Clearly never. The taxing power of all communities is necessarily and justly limited to the property of its own citizens, and to the property of others, having a distinct local existence as property, within its jurisdiction; it does not extend to rights and franchises, rightly exercised, under the authority of other governments, nor to persons beyond its jurisdiction. As the Constitution has left the taxing power of the States, so the bank charter leaves it. Congress has not undertaken either to take away, or to confer, a taxing power; nor to enlarge, or to restrain it; if it were to do either, I hardly know which of the two would be the least excusable.

I beg leave to repeat, Mr. President, that what I have now been considering are the President's objections, not to the policy or expediency, but to the constitutionality of the bank; and not to the constitutionality of any new or proposed bank, but of the bank as it now is, and as it has long existed. If the President had declined to approve this bill because he thought the original charter unwisely granted, and the bank, in point of policy and expediency, objectionable or mischievous, and in that view only had suggested the reasons now urged by him, his argument, however inconclusive, would have been intelligible, and not, in its whole frame and scope, inconsistent with all well-established first principles. His rejection of the bill, in that case, would have been, no doubt, an extraordinary exercise of power; but it would have been, nevertheless, the exercise of a power belonging to his office, and trusted by the Constitution to his discretion. But when he puts forth an array of arguments such as the message employs, not against the expediency of the bank, but against its constitutional existence, he confounds all distinctions, mixes questions of policy and questions of right together, and turns all constitutional restraints into mere matters of opin-

ion. As far as its power extends, either in its direct effects or as a precedent, the message not only unsettles every thing which has been settled under the Constitution, but would show, also, that the Constitution itself is utterly incapable of any fixed construction or definite interpretation, and that there is no possibility of establishing, by its authority, any practical limitations on the powers of the respective branches of the government.

When the message denies, as it does, the authority of the Supreme Court to decide on constitutional questions, it effects, so far as the opinion of the President and his authority can effect it, a complete change in our government. It does two things; first, it converts constitutional limitations of power into mere matters of opinion, and then it strikes the judicial department, as an efficient department, out of our system. But the message by no means stops even at this point. Having denied to Congress the authority of judging what powers may be constitutionally conferred on a bank, and having erected the judgment of the President himself into a standard by which to try the constitutional character of such powers, and having denounced the authority of the Supreme Court to decide finally on constitutional questions, the message proceeds to claim for the President, not the power of approval, but the primary power, the power of originating laws. The President informs Congress, that *he* would have sent them such a charter, if it had been properly asked for, as they ought to confer. He very plainly intimates, that, in his opinion, the establishment of all laws, of this nature at least, belongs to the functions of the executive government; and that Congress ought to have waited for the manifestation of the executive will, before it presumed to touch the subject. Such, Mr. President, stripped of their disguises, are the real pretences set up in behalf of the executive power in this most extraordinary paper.

Mr. President, we have arrived at a new epoch. We are entering on experiments, with the government and the Constitution of the country, hitherto untried, and of fearful and appalling aspect. This message calls us to the contemplation of a future which little resembles the past. Its principles are at war with all that public opinion has sustained, and all which the experience of the government has sanctioned. It denies first principles; it contradicts truths, heretofore received as indisputable.

It denies to the judiciary the interpretation of law, and claims to divide with Congress the power of originating statutes. It extends the grasp of executive pretension over every power of the government. But this is not all. It presents the chief magistrate of the Union in the attitude of arguing away the powers of that government over which he has been chosen to preside; and adopting for this purpose modes of reasoning which, even under the influence of all proper feeling towards high official station, it is difficult to regard as respectable. It appeals to every prejudice which may betray men into a mistaken view of their own interests, and to every passion which may lead them to disobey the impulses of their understanding. It urges all the specious topics of State rights and national encroachment against that which a great majority of the States have affirmed to be rightful, and in which all of them have acquiesced. It sows, in an unsparing manner, the seeds of jealousy and ill-will against that government of which its author is the official head. It raises a cry, that liberty is in danger, at the very moment when it puts forth claims to powers heretofore unknown and unheard of. It affects alarm for the public freedom, when nothing endangers that freedom so much as its own unparalleled pretences. This, even, is not all. It manifestly seeks to inflame the poor against the rich; it wantonly attacks whole classes of the people, for the purpose of turning against them the prejudices and the resentments of other classes. It is a state paper which finds no topic too exciting for its use, no passion too inflammable for its address and its solicitation.

Such is this message. It remains now for the people of the United States to choose between the principles here avowed and their government. These cannot subsist together. The one or the other must be rejected. If the sentiments of the message shall receive general approbation, the Constitution will have perished even earlier than the moment which its enemies originally allowed for the termination of its existence. It will not have survived to its fiftieth year.

The Constitution not a Compact between Sovereign States*

On the 21st of January, 1833, Mr. Wilkins, chairman of the Judiciary Committee of the Senate, introduced the bill further to provide for the collection of duties. On the 22d day of the same month, Mr. Calhoun submitted the following resolutions: —

"*Resolved*, That the people of the several States composing these United States are united as parties to a constitutional compact, to which the people of each State acceded as a separate sovereign community, each binding itself by its own particular ratification; and that the union, of which the said compact is the bond, is a union *between the States* ratifying the same.

"*Resolved*, That the people of the several States thus united by the constitutional compact, in forming that instrument, and in creating a general government to carry into effect the objects for which they were formed, delegated to that government, for that purpose, certain definite powers, to be exercised jointly, reserving, at the same time, each State to itself, the residuary mass of powers, to be exercised by its own separate government; and that whenever the general government assumes the exercise of powers not delegated by the compact, its acts are unauthorized, and are of no effect; and that the same government is not made the final judge of the powers delegated to it, since that would make its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among sovereign parties, without any common judge, each has an equal right to judge for itself, as well of the infraction as of the mode and measure of redress.

"*Resolved*, That the assertions, that the people of these United States, taken collectively as individuals, are now, or ever have been, united on the principle of the social compact, and, as such, are now formed into one nation or people, or that they have ever been so united in any one

* A Speech delivered in the Senate of the United States, on the 16th of February, 1833, in reply to Mr. Calhoun's Speech, on the Bill "further to provide for the Collection of Duties on Imports."

stage of their political existence; that the people of the several States composing the Union have not, as members thereof, retained their sovereignty; that the allegiance of their citizens has been transferred to the general government; that they have parted with the right of punishing treason through their respective State governments; and that they have not the right of judging in the last resort as to the extent of the powers reserved, and of consequence of those delegated, — are not only without foundation in truth, but are contrary to the most certain and plain historical facts, and the clearest deductions of reason; and that all exercise of power on the part of the general government, or any of its departments, claiming authority from such erroneous assumptions, must of necessity be unconstitutional, — must tend, directly and inevitably, to subvert the sovereignty of the States, to destroy the federal character of the Union, and to rear on its ruins a consolidated government, without constitutional check or limitation, and which must necessarily terminate in the loss of liberty itself."

On Saturday, the 16th of February, Mr. Calhoun spoke in opposition to the bill, and in support of these resolutions. He was followed by Mr. Webster in this speech.

Mr. President, — The gentleman from South Carolina has admonished us to be mindful of the opinions of those who shall come after us. We must take our chance, Sir, as to the light in which posterity will regard us. I do not decline its judgment, nor withhold myself from its scrutiny. Feeling that I am performing my public duty with singleness of heart and to the best of my ability, I fearlessly trust myself to the country, now and hereafter, and leave both my motives and my character to its decision.

The gentleman has terminated his speech in a tone of threat and defiance towards this bill, even should it become a law of the land, altogether unusual in the halls of Congress. But I shall not suffer myself to be excited into warmth by his denunciation of the measure which I support. Among the feelings which at this moment fill my breast, not the least is that of regret at the position in which the gentleman has placed himself. Sir, he does himself no justice. The cause which he has espoused finds no basis in the Constitution, no succor from public sympathy, no cheering from a patriotic community. He has no foothold on which to stand while he might display the powers of his acknowledged talents. Every thing beneath his feet is

hollow and treacherous. He is like a strong man struggling in a morass: every effort to extricate himself only sinks him deeper and deeper. And I fear the resemblance may be carried still farther; I fear that no friend can safely come to his relief, that no one can approach near enough to hold out a helping hand, without danger of going down himself, also, into the bottomless depths of this Serbonian bog.

The honorable gentleman has declared, that on the decision of the question now in debate may depend the cause of liberty itself. I am of the same opinion; but then, Sir, the liberty which I think is staked on the contest is not political liberty, in any general and undefined character, but our own well-understood and long-enjoyed *American* liberty.

Sir, I love Liberty no less ardently than the gentleman himself, in whatever form she may have appeared in the progress of human history. As exhibited in the master states of antiquity, as breaking out again from amidst the darkness of the Middle Ages, and beaming on the formation of new communities in modern Europe, she has, always and everywhere, charms for me. Yet, Sir, it is our own liberty, guarded by constitutions and secured by union, it is that liberty which is our paternal inheritance, it is our established, dear-bought, peculiar American liberty, to which I am chiefly devoted, and the cause of which I now mean, to the utmost of my power, to maintain and defend.

Mr. President, if I considered the constitutional question now before us as doubtful as it is important, and if I supposed that its decision, either in the Senate or by the country, was likely to be in any degree influenced by the manner in which I might now discuss it, this would be to me a moment of deep solicitude. Such a moment has once existed. There has been a time, when, rising in this place, on the same question, I felt, I must confess, that something for good or evil to the Constitution of the country might depend on an effort of mine. But circumstances are changed. Since that day, Sir, the public opinion has become awakened to this great question; it has grasped it; it has reasoned upon it, as becomes an intelligent and patriotic community, and has settled it, or now seems in the progress of settling it, by an authority which none can disobey, the authority of the people themselves.

I shall not, Mr. President, follow the gentleman, step by step,

through the course of his speech. Much of what he has said he has deemed necessary to the just explanation and defence of his own political character and conduct. On this I shall offer no comment. Much, too, has consisted of philosophical remark upon the general nature of political liberty, and the history of free institutions; and upon other topics, so general in their nature as to possess, in my opinion, only a remote bearing on the immediate subject of this debate.

But the gentleman's speech made some days ago, upon introducing his resolutions, those resolutions themselves, and parts of the speech now just concluded, may, I presume, be justly regarded as containing the whole South Carolina doctrine. That doctrine it is my purpose now to examine, and to compare it with the Constitution of the United States. I shall not consent, Sir, to make any new constitution, or to establish another form of government. I will not undertake to say what a constitution for these United States ought to be. That question the people have decided for themselves; and I shall take the instrument as they have established it, and shall endeavor to maintain it, in its plain sense and meaning, against opinions and notions which, in my judgment, threaten its subversion.

The resolutions introduced by the gentleman were apparently drawn up with care, and brought forward upon deliberation. I shall not be in danger, therefore, of misunderstanding him, or those who agree with him, if I proceed at once to these resolutions, and consider them as an authentic statement of those opinions upon the great constitutional question, by which the recent proceedings in South Carolina are attempted to be justified.

These resolutions are three in number.

The third seems intended to enumerate, and to deny, the several opinions expressed in the President's proclamation, respecting the nature and powers of this government. Of this third resolution, I purpose, at present, to take no particular notice.

The first two resolutions of the honorable member affirm these propositions, viz.: —

1. That the political system under which we live, and under which Congress is now assembled, is a *compact*, to which the people of the several States, as separate and sovereign communities, are *the parties*.

2. That these sovereign parties have a right to judge, each for itself, of any alleged violation of the Constitution by Congress; and, in case of such violation, to choose, each for itself, its own mode and measure of redress.

It is true, Sir, that the honorable member calls this a "constitutional" compact; but still he affirms it to be a compact between sovereign States. What precise meaning, then, does he attach to the term *constitutional?* When applied to compacts between sovereign States, the term *constitutional* affixes to the word *compact* no definite idea. Were we to hear of a constitutional league or treaty between England and France, or a constitutional convention between Austria and Russia, we should not understand what could be intended by such a league, such a treaty, or such a convention. In these connections, the word is void of all meaning; and yet, Sir, it is easy, quite easy, to see why the honorable gentleman has used it in these resolutions. He cannot open the book, and look upon our written frame of government, without seeing that it is called a *constitution.* This may well be appalling to him. It threatens his whole doctrine of compact, and its darling derivatives, nullification and secession, with instant confutation. Because, if he admits our instrument of government to be a *constitution,* then, for that very reason, it is not a compact between sovereigns; a constitution of government and a compact between sovereign powers being things essentially unlike in their very natures, and incapable of ever being the same. Yet the word *constitution* is on the very front of the instrument. He cannot overlook it. He seeks, therefore, to compromise the matter, and to sink all the substantial sense of the word, while he retains a resemblance of its sound. He introduces a new word of his own, viz. *compact,* as importing the principal idea, and designed to play the principal part, and degrades *constitution* into an insignificant, idle epithet, attached to *compact.* The whole then stands as a "*constitutional compact*"! And in this way he hopes to pass off a plausible gloss, as satisfying the words of the instrument. But he will find himself disappointed. Sir, I must say to the honorable gentleman, that, in our American political grammar, CONSTITUTION is a noun substantive; it imports a distinct and clear idea of itself; and it is not to lose its importance and dignity, it is not to be turned into a poor, ambiguous, senseless, unmeaning

adjective, for the purpose of accommodating any new set of political notions. Sir, we reject his new rules of syntax altogether. We will not give up our forms of political speech to the grammarians of the school of nullification. By the Constitution, we mean, not a "constitutional compact," but, simply and directly, the Constitution, the fundamental law; and if there be one word in the language which the people of the United States understand, this is that word. We know no more of a constitutional compact between sovereign powers, than we know of a *constitutional* indenture of copartnership, a *constitutional* deed of conveyance, or a *constitutional* bill of exchange. But we know what the *Constitution* is; we know what the plainly written, fundamental law is; we know what the bond of our Union and the security of our liberties is; and we mean to maintain and to defend it, in its plain sense and unsophisticated meaning.

The sense of the gentleman's proposition, therefore, is not at all affected, one way or the other, by the use of this word. That proposition still is, that our system of government is but a *compact* between the people of separate and sovereign States.

Was it Mirabeau, Mr. President, or some other master of the human passions, who has told us that words are things? They are indeed things, and things of mighty influence, not only in addresses to the passions and high-wrought feelings of mankind, but in the discussion of legal and political questions also; because a just conclusion is often avoided, or a false one reached, by the adroit substitution of one phrase, or one word, for another. Of this we have, I think, another example in the resolutions before us.

The first resolution declares that the people of the several States "*acceded*" to the Constitution, or to the constitutional compact, as it is called. This word "accede," not found either in the Constitution itself, or in the ratification of it by any one of the States, has been chosen for use here, doubtless, not without a well-considered purpose.

The natural converse of *accession* is *secession;* and, therefore, when it is stated that the people of the States acceded to the Union, it may be more plausibly argued that they may secede from it. If, in adopting the Constitution, nothing was done but acceding to a compact, nothing would seem necessary, in order to break it up, but to secede from the same compact. But the

term is wholly out of place. *Accession*, as a word applied to political associations, implies coming into a league, treaty, or confederacy, by one hitherto a stranger to it; and *secession* implies departing from such league or confederacy. The people of the United States have used no such form of expression in establishing the present government. They do not say that they *accede* to a league, but they declare that they *ordain* and *establish* a Constitution. Such are the very words of the instrument itself; and in all the States, without an exception, the language used by their conventions was, that they "*ratified the Constitution*"; some of them employing the additional words "assented to" and "adopted," but all of them "ratifying."

There is more importance than may, at first sight, appear, in the introduction of this new word by the honorable mover of these resolutions. Its adoption and use are indispensable to maintain those premises, from which his main conclusion is to be afterwards drawn. But before showing that, allow me to remark, that this phraseology tends to keep out of sight the just view of a previous political history, as well as to suggest wrong ideas as to what was actually done when the present Constitution was agreed to. In 1789, and before this Constitution was adopted, the United States had already been in a union, more or less close, for fifteen years. At least as far back as the meeting of the first Congress, in 1774, they had been in some measure, and for some national purposes, united together. Before the Confederation of 1781, they had declared independence jointly, and had carried on the war jointly, both by sea and land; and this not as separate States, but as one people. When, therefore, they formed that Confederation, and adopted its articles as articles of perpetual union, they did not come together for the first time; and therefore they did not speak of the States as *acceding* to the Confederation, although it was a league, and nothing but a league, and rested on nothing but plighted faith for its performance. Yet, even then, the States were not strangers to each other; there was a bond of union already subsisting between them; they were associated, united States; and the object of the Confederation was to make a stronger and better bond of union. Their representatives deliberated together on these proposed Articles of Confederation, and, being authorized by their respective States, finally "*ratified and confirmed*"

them. Inasmuch as they were already in union, they did not speak of *acceding* to the new Articles of Confederation, but of *ratifying and confirming* them; and this language was not used inadvertently, because, in the same instrument, *accession* is used in its proper sense, when applied to Canada, which was altogether a stranger to the existing union. "Canada," says the eleventh article, "*acceding* to this Confederation, and joining in the measures of the United States, shall be admitted into the Union."

Having thus used the terms *ratify* and *confirm*, even in regard to the old Confederation, it would have been strange indeed, if the people of the United States, after its formation, and when they came to establish the present Constitution, had spoken of the States, or the people of the States, as *acceding* to this Constitution. Such language would have been ill-suited to the occasion. It would have implied an existing separation or disunion among the States, such as never has existed since 1774. No such language, therefore, was used. The language actually employed is, *adopt*, *ratify*, *ordain*, *establish*.

Therefore, Sir, since any State, before she can prove her right to dissolve the Union, must show her authority to undo what has been done, no State is at liberty to *secede*, on the ground that she and other States have done nothing but *accede*. She must show that she has a right to *reverse* what has been *ordained*, to *unsettle* and *overthrow* what has been *established*, to *reject* what the people have *adopted*, and to *break up* what they have *ratified;* because these are the terms which express the transactions which have actually taken place. In other words, she must show her right to make a revolution.

If, Mr. President, in drawing these resolutions, the honorable member had confined himself to the use of constitutional language, there would have been a wide and awful *hiatus* between his premises and his conclusion. Leaving out the two words *compact* and *accession*, which are not constitutional modes of expression, and stating the matter precisely as the truth is, his first resolution would have affirmed that *the people of the several States ratified this Constitution, or form of government.* These are the very words of South Carolina herself, in her act of ratification. Let, then, his first resolution tell the exact truth; let it state the fact precisely as it exists; let it say that the people of

the several States ratified a constitution, or form of government; and then, Sir, what will become of his inference in his second resolution, which is in these words, viz. "that, as in all other cases of compact among sovereign parties, each has an equal right to judge for itself, as well of the infraction as of the mode and measure of redress"? It is obvious, is it not, Sir? that this conclusion requires for its support quite other premises; it requires premises which speak of *accession* and of *compact* between sovereign powers; and, without such premises, it is altogether unmeaning.

Mr. President, if the honorable member will truly state what the people did in forming this Constitution, and then state what they must do if they would now undo what they then did, he will unavoidably state a case of revolution. Let us see if it be not so. He must state, in the first place, that the people of the several States adopted and ratified this Constitution, or form of government; and, in the next place, he must state that they have a right to undo this; that is to say, that they have a right to discard the form of government which they have adopted, and to break up the Constitution which they have ratified. Now, Sir, this is neither more nor less than saying that they have a right to make a revolution. To reject an established government, to break up a political constitution, is revolution.

I deny that any man can state accurately what was done by the people, in establishing the present Constitution, and then state accurately what the people, or any part of them, must now do to get rid of its obligations, without stating an undeniable case of the overthrow of government. I admit, of course, that the people may, if they choose, overthrow the government. But, then, that is revolution. The doctrine now contended for is, that, by *nullification* or *secession*, the obligations and authority of the government may be set aside or rejected, without revolution. But that is what I deny; and what I say is, that no man can state the case with historical accuracy, and in constitutional language, without showing that the honorable gentleman's right, as asserted in his conclusion, is a revolutionary right merely; that it does not and cannot exist under the Constitution, or agreeably to the Constitution, but can come into existence only when the Constitution is overthrown. This is the

reason, Sir, which makes it necessary to abandon the use of constitutional language for a new vocabulary, and to substitute, in the place of plain historical facts, a series of assumptions. This is the reason why it is necessary to give new names to things, to speak of the Constitution, not as a constitution, but as a compact, and of the ratifications by the people, not as ratifications, but as acts of accession.

Sir, I intend to hold the gentleman to the written record. In the discussion of a constitutional question, I intend to impose upon him the restraints of constitutional language. The people have ordained a Constitution; can they reject it without revolution? They have established a form of government; can they overthrow it without revolution? These are the true questions.

Allow me now, Mr. President, to inquire further into the extent of the propositions contained in the resolutions, and their necessary consequences.

Where sovereign communities are parties, there is no essential difference between a compact, a confederation, and a league. They all equally rest on the plighted faith of the sovereign party. A league, or confederacy, is but a subsisting or continuing treaty.

The gentleman's resolutions, then, affirm, in effect, that these twenty-four United States are held together only by a subsisting treaty, resting for its fulfilment and continuance on no inherent power of its own, but on the plighted faith of each State; or, in other words, that our Union is but a league; and, as a consequence from this proposition, they further affirm that, as sovereigns are subject to no superior power, the States must judge, each for itself, of any alleged violation of the league; and if such violation be supposed to have occurred, each may adopt any mode or measure of redress which it shall think proper.

Other consequences naturally follow, too, from the main proposition. If a league between sovereign powers have no limitation as to the time of its duration, and contain nothing making it perpetual, it subsists only during the good pleasure of the parties, although no violation be complained of. If, in the opinion of either party, it be violated, such party may say that he will no longer fulfil its obligations on his part, but will consider

the whole league or compact at an end, although it might be one of its stipulations that it should be perpetual. Upon this principle, the Congress of the United States, in 1798, declared null and void the treaty of alliance between the United States and France, though it professed to be a perpetual alliance.

If the violation of the league be accompanied with serious injuries, the suffering party, being sole judge of his own mode and measure of redress, has a right to indemnify himself by reprisals on the offending members of the league; and reprisals, if the circumstances of the case require it, may be followed by direct, avowed, and public war.

The necessary import of the resolution, therefore, is, that the United States are connected only by a league; that it is in the good pleasure of every State to decide how long she will choose to remain a member of this league; that any State may determine the extent of her own obligations under it, and accept or reject what shall be decided by the whole; that she may also determine whether her rights have been violated, what is the extent of the injury done her, and what mode and measure of redress her wrongs may make it fit and expedient for her to adopt. The result of the whole is, that any State may secede at pleasure; that any State may resist a law which she herself may choose to say exceeds the power of Congress; and that, as a sovereign power, she may redress her own grievances, by her own arm, at her own discretion. She may make reprisals; she may cruise against the property of other members of the league; she may authorize captures, and make open war.

If, Sir, this be our political condition, it is time the people of the United States understood it. Let us look for a moment to the practical consequences of these opinions. One State, holding an embargo law unconstitutional, may declare her opinion, and withdraw from the Union. *She* secedes. Another, forming and expressing the same judgment on a law laying duties on imports, may withdraw also. *She* secedes. And as, in her opinion, money has been taken out of the pockets of her citizens illegally, under pretence of this law, and as she has power to redress their wrongs, she may demand satisfaction; and, if refused, she may take it with a strong hand. The gentleman has himself pronounced the collection of duties, under existing laws, to be nothing but robbery. Robbers, of course, may be rightful-

ly dispossessed of the fruits of their flagitious crimes; and, therefore, reprisals, impositions on the commerce of other States, foreign alliances against them, or open war, are all modes of redress justly open to the discretion and choice of South Carolina; for she is to judge of her own rights, and to seek satisfaction for her own wrongs, in her own way.

But, Sir, a *third* State is of opinion, not only that these laws of imposts are constitutional, but that it is the absolute duty of Congress to pass and to maintain such laws; and that, by omitting to pass and maintain them, its constitutional obligations would be grossly disregarded. She herself relinquished the power of protection, she might allege, and allege truly, and gave it up to Congress, on the faith that Congress would exercise it. If Congress now refuse to exercise it, Congress does, as she may insist, break the condition of the grant, and thus manifestly violate the Constitution; and for this violation of the Constitution, *she* may threaten to secede also. Virginia may secede, and hold the fortresses in the Chesapeake. The Western States may secede, and take to their own use the public lands. Louisiana may secede, if she choose, form a foreign alliance, and hold the mouth of the Mississippi. If one State may secede, ten may do so, twenty may do so, twenty-three may do so. Sir, as these secessions go on, one after another, what is to constitute the United States? Whose will be the army? Whose the navy? Who will pay the debts? Who fulfil the public treaties? Who perform the constitutional guaranties? Who govern this District and the Territories? Who retain the public property?

Mr. President, every man must see that these are all questions which can arise only *after a revolution.* They presuppose the breaking up of the government. While the Constitution lasts, they are repressed; they spring up to annoy and startle us only from its grave.

The Constitution does not provide for events which must be preceded by its own destruction. SECESSION, therefore, since it must bring these consequences with it, is REVOLUTIONARY, and NULLIFICATION is equally REVOLUTIONARY. What is revolution? Why, Sir, that is revolution which overturns, or controls, or successfully resists, the existing public authority; that which arrests the exercise of the supreme power; that which introduces a new paramount authority into the rule of the State. Now,

Sir, this is the precise object of nullification. It attempts to supersede the supreme legislative authority. It arrests the arm of the executive magistrate. It interrupts the exercise of the accustomed judicial power. Under the name of an ordinance, it declares null and void, within the State, all the revenue laws of the United States. Is not this revolutionary? Sir, so soon as this ordinance shall be carried into effect, *a revolution* will have commenced in South Carolina. She will have thrown off the authority to which her citizens have heretofore been subject. She will have declared her own opinions and her own will to be above the laws and above the power of those who are intrusted with their administration. If she makes good these declarations, she is revolutionized. As to her, it is as distinctly a change of the supreme power, as the American Revolution of 1776. That revolution did not subvert government in all its forms. It did not subvert local laws and municipal administrations. It only threw off the dominion of a power claiming to be superior, and to have a right, in many important respects, to exercise legislative authority. Thinking this authority to have been usurped or abused, the American Colonies, now the United States, bade it defiance, and freed themselves from it by means of a revolution. But that revolution left them with their own municipal laws still, and the forms of local government. If Carolina now shall effectually resist the laws of Congress; if she shall be her own judge, take her remedy into her own hands, obey the laws of the Union when she pleases and disobey them when she pleases, she will relieve herself from a paramount power as distinctly as the American Colonies did the same thing in 1776. In other words, she will achieve, as to herself, a revolution.

But, Sir, while practical nullification in South Carolina would be, as to herself, actual and distinct revolution, its necessary tendency must also be to spread revolution, and to break up the Constitution, as to all the other States. It strikes a deadly blow at the vital principle of the whole Union. To allow State resistance to the laws of Congress to be rightful and proper, to admit nullification in some States, and yet not expect to see a dismemberment of the entire government, appears to me the wildest illusion, and the most extravagant folly. The gentleman seems not conscious of the direction or the rapidity of his own course. The current of his opinions sweeps him along, he

knows not whither. To begin with nullification, with the avowed intent, nevertheless, not to proceed to secession, dismemberment, and general revolution, is as if one were to take the plunge of Niagara, and cry out that he would stop half way down. In the one case, as in the other, the rash adventurer must go to the bottom of the dark abyss below, were it not that that abyss has no discovered bottom.

Nullification, if successful, arrests the power of the law, absolves citizens from their duty, subverts the foundation both of protection and obedience, dispenses with oaths and obligations of allegiance, and elevates another authority to supreme command. Is not this revolution? And it raises to supreme command four-and-twenty distinct powers, each professing to be under a general government, and yet each setting its laws at defiance at pleasure. Is not this anarchy, as well as revolution? Sir, the Constitution of the United States was received as a whole, and for the whole country. If it cannot stand altogether, it cannot stand in parts; and if the laws cannot be executed everywhere, they cannot long be executed anywhere. The gentleman very well knows that all duties and imposts must be uniform throughout the country. He knows that we cannot have one rule or one law for South Carolina, and another for other States. He must see, therefore, and does see, and every man sees, that the only alternative is a repeal of the laws throughout the whole Union, or their execution in Carolina as well as elsewhere. And this repeal is demanded because a single State interposes her veto, and threatens resistance! The result of the gentleman's opinion, or rather the very text of his doctrine, is, that no act of Congress can bind all the States, the constitutionality of which is not admitted by all; or, in other words, that no single State is bound, against its own dissent, by a law of imposts. This is precisely the evil experienced under the old Confederation, and for remedy of which this Constitution was adopted. The leading object in establishing this government, an object forced on the country by the condition of the times and the absolute necessity of the law, was to give to Congress power to lay and collect imposts *without the consent of particular States*. The Revolutionary debt remained unpaid; the national treasury was bankrupt; the country was destitute of credit; Congress issued its requisitions on the States, and the

States neglected them; there was no power of coercion but war, Congress could not lay imposts, or other taxes, by its own authority; the whole general government, therefore, was little more than a name. The Articles of Confederation, as to purposes of revenue and finance, were nearly a dead letter. The country sought to escape from this condition, at once feeble and disgraceful, by constituting a government which should have power, of itself, to lay duties and taxes, and to pay the public debt, and provide for the general welfare; and to lay these duties and taxes in all the States, without asking the consent of the State governments. This was the very power on which the new Constitution was to depend for all its ability to do good; and without it, it can be no government, now or at any time. Yet, Sir, it is precisely against this power, so absolutely indispensable to the very being of the government, that South Carolina directs her ordinance. She attacks the government in its authority to raise revenue, the very main-spring of the whole system; and if she succeed, every movement of that system must inevitably cease. It is of no avail that she declares that she does not resist the law as a revenue law, but as a law for protecting manufactures. It is a revenue law; it is the very law by force of which the revenue is collected; if it be arrested in any State, the revenue ceases in that State; it is, in a word, the sole reliance of the government for the means of maintaining itself and performing its duties.

Mr. President, the alleged right of a State to decide constitutional questions for herself necessarily leads to force, because other States must have the same right, and because different States will decide differently; and when these questions arise between States, if there be no superior power, they can be decided only by the law of force. On entering into the Union, the people of each State gave up a part of their own power to make laws for themselves, in consideration that, as to common objects, they should have a part in making laws for other States. In other words, the people of all the States agreed to create a common government, to be conducted by common counsels. Pennsylvania, for example, yielded the right of laying imposts in her own ports, in consideration that the new government, in which she was to have a share, should possess the power of laying imposts on all the States. If South Carolina now refuses

to submit to this power, she breaks the condition on which other States entered into the Union. She partakes of the common counsels, and therein assists to bind others, while she refuses to be bound herself. It makes no difference in the case, whether she does all this without reason or pretext, or whether she sets up as a reason, that, in her judgment, the acts complained of are unconstitutional. In the judgment of other States, they are not so. It is nothing to them that she offers some reason or some apology for her conduct, if it be one which they do not admit. It is not to be expected that any State will violate her duty without some plausible pretext. That would be too rash a defiance of the opinion of mankind. But if it be a pretext which lies in her own breast; if it be no more than an opinion which she says she has formed, how can other States be satisfied with this? How can they allow her to be judge of her own obligations? Or, if she may judge of her obligations, may they not judge of their rights also? May not the twenty-three entertain an opinion as well as the twenty-fourth? And if it be their right, in their own opinion, as expressed in the common council, to enforce the law against her, how is she to say that her right and her opinion are to be every thing, and their right and their opinion nothing?

Mr. President, if we are to receive the Constitution as the text, and then to lay down in its margin the contradictory commentaries which have been, and which may be, made by different States, the whole page would be a polyglot indeed. It would speak with as many tongues as the builders of Babel, and in dialects as much confused, and mutually as unintelligible. The very instance now before us presents a practical illustration. The law of the last session is declared unconstitutional in South Carolina, and obedience to it is refused. In other States, it is admitted to be strictly constitutional. You walk over the limit of its authority, therefore, when you pass a State line. On one side it is law, on the other side a nullity; and yet it is passed by a common government, having the same authority in all the States.

Such, Sir, are the inevitable results of this doctrine. Beginning with the original error, that the Constitution of the United States is nothing but a compact between sovereign States; asserting, in the next step, that each State has a right to be its

own sole judge of the extent of its own obligations, and consequently of the constitutionality of laws of Congress; and, in the next, that it may oppose whatever it sees fit to declare unconstitutional, and that it decides for itself on the mode and measure of redress, — the argument arrives at once at the conclusion, that what a State dissents from, it may nullify; what it opposes, it may oppose by force; what it decides for itself, it may execute by its own power; and that, in short, it is itself supreme over the legislation of Congress, and supreme over the decisions of the national judicature; supreme over the constitution of the country, supreme over the supreme law of the land. However it seeks to protect itself against these plain inferences, by saying that an unconstitutional law is no law, and that it only opposes such laws as are unconstitutional, yet this does not in the slightest degree vary the result; since it insists on deciding this question for itself; and, in opposition to reason and argument, in opposition to practice and experience, in opposition to the judgment of others, having an equal right to judge, it says, only, "Such is my opinion, and my opinion shall be my law, and I will support it by my own strong hand. I denounce the law; I declare it unconstitutional; that is enough; it shall not be executed. Men in arms are ready to resist its execution. An attempt to enforce it shall cover the land with blood. Elsewhere it may be binding; but here it is trampled under foot."

This, Sir, is practical nullification.

And now, Sir, against all these theories and opinions, I maintain, —

1. That the Constitution of the United States is not a league, confederacy, or compact between the people of the several States in their sovereign capacities; but a government proper, founded on the adoption of the people, and creating direct relations between itself and individuals.

2. That no State authority has power to dissolve these relations; that nothing can dissolve them but revolution; and that, consequently, there can be no such thing as secession without revolution.

3. That there is a supreme law, consisting of the Constitution of the United States, and acts of Congress passed in pursuance of it, and treaties; and that, in cases not capable of assuming the character of a suit in law or equity, Congress

must judge of, and finally interpret, this supreme law so often as it has occasion to pass acts of legislation; and in cases capable of assuming, and actually assuming, the character of a suit, the Supreme Court of the United States is the final interpreter.

4. That an attempt by a State to abrogate, annul, or nullify an act of Congress, or to arrest its operation within her limits, on the ground that, in her opinion, such law is unconstitutional, is a direct usurpation on the just powers of the general government, and on the equal rights of other States; a plain violation of the Constitution, and a proceeding essentially revolutionary in its character and tendency.

Whether the Constitution be a compact between States in their sovereign capacities, is a question which must be mainly argued from what is contained in the instrument itself. We all agree that it is an instrument which has been in some way clothed with power. We all admit that it speaks with authority. The first question then is, What does it say of itself? What does it purport to be? Does it style itself a league, confederacy, or compact between sovereign States? It is to be remembered, Sir, that the Constitution began to speak only after its adoption. Until it was ratified by nine States, it was but a proposal, the mere draught of an instrument. It was like a deed drawn, but not executed. The Convention had framed it; sent it to Congress, then sitting under the Confederation; Congress had transmitted it to the State legislatures; and by these last it was laid before conventions of the people in the several States. All this while it was inoperative paper. It had received no stamp of authority, no sanction; it spoke no language. But when ratified by the people in their respective conventions, then it had a voice, and spoke authentically. Every word in it had then received the sanction of the popular will, and was to be received as the expression of that will. What the Constitution says of itself, therefore, is as conclusive as what it says on any other point. Does it call itself a "compact"? Certainly not. It uses the word *compact* but once, and that is when it declares that the States shall enter into no compact. Does it call itself a "league," a "confederacy," a "subsisting treaty between the States"? Certainly not. There is not a particle of such language in all its pages. But it declares itself a CONSTITUTION. What is a *constitution?* Certainly not a league, compact, or

confederacy, but *a fundamental law.* That fundamental regulation which determines the manner in which the public authority is to be executed, is what forms the *constitution* of a state. Those primary rules which concern the body itself, and the very being of the political society, the form of government, and the manner in which power is to be exercised, — all, in a word, which form together the *constitution of a state,* — these are the fundamental laws. This, Sir, is the language of the public writers. But do we need to be informed, in this country, what a *constitution* is? Is it not an idea perfectly familiar, definite, and well settled? We are at no loss to understand what is meant by the constitution of one of the States; and the Constitution of the United States speaks of itself as being an instrument of the same nature. It says, this *Constitution* shall be the law of the land, any thing in any State *constitution* to the contrary notwithstanding. And it speaks of itself, too, in plain contradistinction from a confederation; for it says that all debts contracted, and all engagements entered into, by the United States, shall be as valid under this *Constitution* as under the *Confederation.* It does not say, as valid under this *compact,* or this league, or this confederation, as under the former confederation, but as valid under this *Constitution.*

This, then, Sir, is declared to be a *constitution.* A constitution is the fundamental law of the state; and this is expressly declared to be the supreme law. It is as if the people had said "We prescribe this fundamental law," or "this supreme law," for they do say that they establish this Constitution, and that it shall be the supreme law. They say that they *ordain and establish* it. Now, Sir, what is the common application of these words? We do not speak of *ordaining* leagues and compacts. If this was intended to be a compact or league, and the States to be parties to it, why was it not so said? Why is there found no one expression in the whole instrument indicating such intent? The old Confederation was expressly called a *league,* and into this league it was declared that the States, as States, severally entered. Why was not similar language used in the Constitution, if a similar intention had existed? Why was it not said, "the States enter into this new league," "the States form this new confederation," or "the States agree to this new compact"? Or why was it not said, in the language of

the gentleman's resolution, that the people of the several States acceded to this compact in their sovereign capacities? What reason is there for supposing that the framers of the Constitution rejected expressions appropriate to their own meaning, and adopted others wholly at war with that meaning?

Again, Sir, the Constitution speaks of that political system which is established as "the government of the United States." Is it not doing strange violence to language to call a league or a compact between sovereign powers a *government?* The government of a state is that organization in which the political power resides. It is the political being created by the constitution or fundamental law. The broad and clear difference between a government and a league or compact is, that a government is a body politic; it has a will of its own; and it possesses powers and faculties to execute its own purposes. Every compact looks to some power to enforce its stipulations. Even in a compact between sovereign communities, there always exists this ultimate reference to a power to insure its execution; although, in such case, this power is but the force of one party against the force of another; that is to say, the power of war. But a *government* executes its decisions by its own supreme authority. Its use of force in compelling obedience to its own enactments is not war. It contemplates no opposing party having a right of resistance. It rests on its own power to enforce its own will; and when it ceases to possess this power, it is no longer a government.

Mr. President, I concur so generally in the very able speech of the gentleman from Virginia near me,* that it is not without diffidence and regret that I venture to differ with him on any point. His opinions, Sir, are redolent of the doctrines of a very distinguished school, for which I have the highest regard, of whose doctrines I can say, what I can also say of the gentleman's speech, that, while I concur in the results, I must be permitted to hesitate about some of the premises. I do not agree that the Constitution is a compact between States in their sovereign capacities. I do not agree, that, in strictness of language, it is a compact at all. But I do agree that it is founded on consent or agreement, or on compact, if the gentleman prefers

* Mr. Rives.

that word, and means no more by it than voluntary consent or agreement. The Constitution, Sir, is not a contract, but the result of a contract; meaning by contract no more than assent. Founded on consent, it is a government proper. Adopted by the agreement of the people of the United States, when adopted, it has become a Constitution. The people have agreed to make a Constitution; but when made, that Constitution becomes what its name imports. It is no longer a mere agreement. Our laws, Sir, have their foundation in the agreement or consent of the two houses of Congress. We say, habitually, that one house proposes a bill, and the other agrees to it; but the result of this agreement is not a compact, but a law. The law, the statute, is not the agreement, but something created by the agreement; and something which, when created, has a new character, and acts by its own authority. So the Constitution of the United States, founded in or on the consent of the people, may be said to rest on compact or consent; but it is not itself the compact, but its result. When the people agree to erect a government, and actually erect it, the thing is done, and the agreement is at an end. The compact is executed, and the end designed by it attained. Henceforth, the fruit of the agreement exists, but the agreement itself is merged in its own accomplishment; since there can be no longer a subsisting agreement or compact *to form* a constitution or government, after that constitution or government has been actually formed and established.

It appears to me, Mr. President, that the plainest account of the establishment of this government presents the most just and philosophical view of its foundation. The people of the several States had their separate State governments; and between the States there also existed a Confederation. With this condition of things the people were not satisfied, as the Confederation had been found not to fulfil its intended objects. It was *proposed*, therefore, to erect a new, common government, which should possess certain definite powers, such as regarded the prosperity of the people of all the States, and to be formed upon the general model of American constitutions. This proposal was assented to, and an instrument was presented to the people of the several States for their consideration. They approved it, and agreed to adopt it, as a Constitution. They executed that

agreement; they adopted the Constitution as a Constitution, and henceforth it must stand as a Constitution until it shall be altogether destroyed. Now, Sir, is not this the truth of the whole matter? And is not all that we have heard of compact between sovereign States the mere effect of a theoretical and artificial mode of reasoning upon the subject? a mode of reasoning which disregards plain facts for the sake of hypothesis?

Mr. President, the nature of sovereignty or sovereign power has been extensively discussed by gentlemen on this occasion, as it generally is when the origin of our government is debated. But I confess myself not entirely satisfied with arguments and illustrations drawn from that topic. The sovereignty of government is an idea belonging to the other side of the Atlantic. No such thing is known in North America. Our governments are all limited. In Europe, sovereignty is of feudal origin, and imports no more than the state of the sovereign. It comprises his rights, duties, exemptions, prerogatives, and powers. But with us, all power is with the people. They alone are sovereign; and they erect what governments they please, and confer on them such powers as they please. None of these governments is sovereign, in the European sense of the word, all being restrained by written constitutions. It seems to me, therefore, that we only perplex ourselves when we attempt to explain the relations existing between the general government and the several State governments, according to those ideas of sovereignty which prevail under systems essentially different from our own.

But, Sir, to return to the Constitution itself; let me inquire what it relies upon for its own continuance and support. I hear it often suggested, that the States, by refusing to appoint Senators and Electors, might bring this government to an end. Perhaps that is true; but the same may be said of the State governments themselves. Suppose the legislature of a State, having the power to appoint the governor and the judges, should omit that duty, would not the State government remain unorganized? No doubt, all elective governments may be broken up by a general abandonment, on the part of those intrusted with political powers, of their appropriate duties. But one popular government has, in this respect, as much security as another. The maintenance of this Constitution does not depend on the plighted faith of the States, as States, to support it; and

this again shows that it is not a league. It relies on individual duty and obligation.

The Constitution of the United States creates direct relations between this government and individuals. This government may punish individuals for treason, and all other crimes in the code, when committed against the United States. It has power, also, to tax individuals, in any mode, and to any extent; and it possesses the further power of demanding from individuals military service. Nothing, certainly, can more clearly distinguish a government from a confederation of states than the possession of these powers. No closer relations can exist between individuals and any government.

On the other hand, the government owes high and solemn duties to every citizen of the country. It is bound to protect him in his most important rights and interests. It makes war for his protection, and no other government in the country can make war. It makes peace for his protection, and no other government can make peace. It maintains armies and navies for his defence and security, and no other government is allowed to maintain them. He goes abroad beneath its flag, and carries over all the earth a national character imparted to him by this government, and which no other government can impart. In whatever relates to war, to peace, to commerce, he knows no other government. All these, Sir, are connections as dear and as sacred as can bind individuals to any government on earth. It is not, therefore, a compact between States, but a government proper, operating directly upon individuals, yielding to them protection on the one hand, and demanding from them obedience on the other.

There is no language in the whole Constitution applicable to a confederation of States. If the States be parties, as States, what are their rights, and what their respective covenants and stipulations? And where are their rights, covenants, and stipulations expressed? The States engage for nothing, they promise nothing. In the Articles of Confederation, they did make promises, and did enter into engagements, and did plight the faith of each State for their fulfilment; but in the Constitution there is nothing of that kind. The reason is, that, in the Constitution, it is the *people* who speak, and not the States. The people ordain the Constitution, and therein address themselves

to the States, and to the legislatures of the States, in the language of injunction and prohibition. The Constitution utters its behests in the name and by authority of the people, and it does not exact from States any plighted public faith to maintain it. On the contrary, it makes its own preservation depend on individual duty and individual obligation. Sir, the States cannot omit to appoint Senators and Electors. It is not a matter resting in State discretion or State pleasure. The Constitution has taken better care of its own preservation. It lays its hand on individual conscience and individual duty. It incapacitates any man to sit in the legislature of a State, who shall not first have taken his solemn oath to support the Constitution of the United States. From the obligation of this oath, no State power can discharge him. All the members of all the State legislatures are as religiously bound to support the Constitution of the United States as they are to support their own State constitution. Nay, Sir, they are as solemnly sworn to support it as we ourselves are, who are members of Congress.

No member of a State legislature can refuse to proceed, at the proper time, to elect Senators to Congress, or to provide for the choice of Electors of President and Vice-President, any more than the members of this Senate can refuse, when the appointed day arrives, to meet the members of the other house, to count the votes for those officers, and ascertain who are chosen. In both cases, the duty binds, and with equal strength, the conscience of the individual member, and it is imposed on all by an oath in the same words. Let it then, never be said, Sir, that it is a matter of discretion with the States whether they will continue the government, or break it up by refusing to appoint Senators and to elect Electors. They have no discretion in the matter. The members of their legislatures cannot avoid doing either, so often as the time arrives, without a direct violation of their duty and their oaths; such a violation as would break up any other government.

Looking still further to the provisions of the Constitution itself, in order to learn its true character, we find its great apparent purpose to be, to unite the people of all the States under one general government, for certain definite objects, and, to the extent of this union, to restrain the separate authority of the States. Congress only can declare war; therefore, when one

State is at war with a foreign nation, all must be at war. The President and the Senate only can make peace; when peace is made for one State, therefore, it must be made for all.

Can any thing be conceived more preposterous, than that any State should have power to nullify the proceedings of the general government respecting peace and war? When war is declared by a law of Congress, can a single State nullify that law, and remain at peace? And yet she may nullify that law as well as any other. If the President and Senate make peace, may one State, nevertheless, continue the war? And yet, if she can nullify a law, she may quite as well nullify a treaty.

The truth is, Mr. President, and no ingenuity of argument, no subtilty of distinction can evade it, that, as to certain purposes, the people of the United States are one people. They are one in making war, and one in making peace; they are one in regulating commerce, and one in laying duties of imposts. The very end and purpose of the Constitution was, to make them one people in these particulars; and it has effectually accomplished its object. All this is apparent on the face of the Constitution itself. I have already said, Sir, that to obtain a power of direct legislation over the people, especially in regard to imposts, was always prominent as a reason for getting rid of the Confederation, and forming a new Constitution. Among innumerable proofs of this, before the assembling of the Convention, allow me to refer only to the report of the committee of the old Congress, July, 1785.

But, Sir, let us go to the actual formation of the Constitution; let us open the journal of the Convention itself, and we shall see that the very first resolution which the Convention adopted, was, "THAT A NATIONAL GOVERNMENT OUGHT TO BE ESTABLISHED, CONSISTING OF A SUPREME LEGISLATURE, JUDICIARY, AND EXECUTIVE."

This itself completely negatives all idea of league, and compact, and confederation. Terms could not be chosen more fit to express an intention to establish a national government, and to banish for ever all notion of a compact between sovereign States.

This resolution was adopted on the 30th of May, 1787. Afterwards, the style was altered, and, instead of being called a national government, it was called the government of the

United States; but the substance of this resolution was retained, and was at the head of that list of resolutions which was afterwards sent to the committee who were to frame the instrument.

It is true, there were gentlemen in the Convention, who were for retaining the Confederation, and amending its Articles; but the majority was against this, and was for a national government. Mr. Patterson's propositions, which were for continuing the Articles of Confederation with additional powers, were submitted to the Convention on the 15th of June, and referred to the committee of the whole. The resolutions forming the basis of a national government, which had once been agreed to in the committee of the whole, and reported, were recommitted to the same committee, on the same day. The Convention, then, in committee of the whole, on the 19th of June, had both these plans before them; that is to say, the plan of a confederacy, or compact, between States, and the plan of a national government. Both these plans were considered and debated, and the committee reported, "That they do not agree to the propositions offered by the honorable Mr. Patterson, but that they again submit the resolutions formerly reported." If, Sir, any historical fact in the world be plain and undeniable, it is that the Convention deliberated on the expediency of continuing the Confederation, with some amendments, and rejected that scheme, and adopted the plan of a national government, with a legislature, an executive, and a judiciary of its own. They were asked to preserve the league; they rejected the proposition. They were asked to continue the existing compact between States; they rejected it. They rejected compact, league, and confederation, and set themselves about framing the constitution of a national government; and they accomplished what they undertook.

If men will open their eyes fairly to the lights of history, it is impossible to be deceived on this point. The great object was to supersede the Confederation, by a regular government; because, under the Confederation, Congress had power only to make requisitions on States; and if States declined compliance, as they did, there was no remedy but war against such delinquent States. It would seem, from Mr. Jefferson's correspondence, in 1786 and 1787, that he was of opinion that even this

remedy ought to be tried. "There will be no money in the treasury," said he, "till the confederacy shows its teeth"; and he suggests that a single frigate would soon levy, on the commerce of a delinquent State, the deficiency of its contribution. But this would be war; and it was evident that a confederacy could not long hold together, which should be at war with its members. The Constitution was adopted to avoid this necessity. It was adopted that there might be a government which should act directly on individuals, without borrowing aid from the State governments. This is clear as light itself on the very face of the provisions of the Constitution, and its whole history tends to the same conclusion. Its framers gave this very reason for their work in the most distinct terms. Allow me to quote but one or two proofs, out of hundreds. That State, so small in territory, but so distinguished for learning and talent, Connecticut, had sent to the general Convention, among other members, Samuel Johnston and Oliver Ellsworth. The Constitution having been framed, it was submitted to a convention of the people of Connecticut for ratification on the part of that State; and Mr. Johnston and Mr. Ellsworth were also members of this convention. On the first day of the debates, being called on to explain the reasons which led the Convention at Philadelphia to recommend such a Constitution, after showing the insufficiency of the existing confederacy, inasmuch as it applied to States, as States, Mr. Johnston proceeded to say, —

"The Convention saw this imperfection in attempting to legislate for States in their political capacity, that the coercion of law can be exercised by nothing but a military force. They have, therefore, gone upon entirely new ground. They have formed one new nation out of the individual States. The Constitution vests in the general legislature a power to make laws in matters of national concern; to appoint judges to decide upon these laws; and to appoint officers to carry them into execution. This excludes the idea of an armed force. The power which is to enforce these laws is to be a legal power, vested in proper magistrates. The force which is to be employed is the energy of law; and this force is to operate only upon individuals who fail in their duty to their country. This is the peculiar glory of the Constitution, that it depends upon the mild and equal energy of the magistracy for the execution of the laws."

In the further course of the debate, Mr. Ellsworth said, —

"In republics, it is a fundamental principle, that the majority govern, and that the minority comply with the general voice. How contrary, then, to republican principles, how humiliating, is our present situation! A single State can rise up, and put a *veto* upon the most important public measures. We have seen this actually take place; a single State has controlled the general voice of the Union; a minority, a very small minority, has governed us. So far is this from being consistent with republican principles, that it is, in effect, the worst species of monarchy.

"Hence we see how necessary for the Union is a coercive principle. No man pretends the contrary. We all see and feel this necessity. The only question is, Shall it be a coercion of law, or a coercion of arms? There is no other possible alternative. Where will those who oppose a coercion of law come out? Where will they end? A necessary consequence of their principles is a war of the States one against another. I am for coercion by law; that coercion which acts only upon delinquent individuals. This Constitution does not attempt to coerce sovereign bodies, States, in their political capacity. No coercion is applicable to such bodies, but that of an armed force. If we should attempt to execute the laws of the Union by sending an armed force against a delinquent State, it would involve the good and bad, the innocent and guilty, in the same calamity. But this legal coercion singles out the guilty individual, and punishes him for breaking the laws of the Union."

Indeed, Sir, if we look to all contemporary history, to the numbers of the Federalist, to the debates in the conventions, to the publications of friends and foes, they all agree, that a change had been made from a confederacy of States to a different system; they all agree, that the Convention had formed a Constitution for a national government. With this result some were satisfied, and some were dissatisfied; but all admitted that the thing had been done. In none of these various productions and publications did any one intimate that the new Constitution was but another compact between States in their sovereign capacities. I do not find such an opinion advanced in a single instance. Everywhere, the people were told that the old Confederation was to be abandoned, and a new system to be tried; that a proper government was proposed, to be founded in the name of the people, and to have a regular organization of its own. Everywhere, the people were told that it was to be a government with direct powers to make laws over individuals, and

to lay taxes and imposts without the consent of the States. Everywhere, it was understood to be a popular Constitution. It came to the people for their adoption, and was to rest on the same deep foundation as the State constitutions themselves. Its most distinguished advocates, who had been themselves members of the Convention, declared that the very object of submitting the Constitution to the people was, to preclude the possibility of its being regarded as a mere compact. "However gross a heresy," say the writers of the Federalist, "it may be to maintain that a party to a *compact* has a right to revoke that *compact*, the doctrine itself has had respectable advocates. The possibility of a question of this nature proves the necessity of laying the foundations of our national government deeper than in the mere sanction of delegated authority. The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE."

Such is the language, Sir, addressed to the people, while they yet had the Constitution under consideration. The powers conferred on the new government were perfectly well understood to be conferred, not by any State, or the people of any State, but by the people of the United States. Virginia is more explicit, perhaps, in this particular, than any other State. Her convention, assembled to ratify the Constitution, "in the name and behalf of the people of Virginia, declare and make known, that the powers granted under the Constitution, *being derived from the people of the United States*, may be resumed by them whenever the same shall be perverted to their injury or oppression."

Is this language which describes the formation of a compact between States? or language describing the grant of powers to a new government, by the whole people of the United States?

Among all the other ratifications, there is not one which speaks of the Constitution as a compact between States. Those of Massachusetts and New Hampshire express the transaction, in my opinion, with sufficient accuracy. They recognize the Divine goodness "in affording THE PEOPLE OF THE UNITED STATES an opportunity of entering into an explicit and solemn compact with each other, *by assenting to and ratifying a new Constitution*." You will observe, Sir, that it is the PEOPLE, and not the States, who have entered into this compact; and it is the PEOPLE of all the United States These conventions, by this form

of expression, meant merely to say, that the people of the United States had, by the blessing of Providence, enjoyed the opportunity of establishing a new Constitution, *founded in the consent of the people.* This consent of the people has been called, by European writers, the *social compact;* and, in conformity to this common mode of expression, these conventions speak of that assent, on which the new Constitution was to rest, as an explicit and solemn compact, not which the States had entered into with each other, but which the *people* of the United States had entered into.

Finally, Sir, how can any man get over the words of the Constitution itself? — "WE, THE PEOPLE OF THE UNITED STATES, DO ORDAIN AND ESTABLISH THIS CONSTITUTION." These words must cease to be a part of the Constitution, they must be obliterated from the parchment on which they are written, before any human ingenuity or human argument can remove the popular basis on which that Constitution rests, and turn the instrument into a mere compact between sovereign States.

The second proposition, Sir, which I propose to maintain, is, that no State authority can dissolve the relations subsisting between the government of the United States and individuals; that nothing can dissolve these relations but revolution; and that, therefore, there can be no such thing as *secession* without revolution. All this follows, as it seems to me, as a just consequence, if it be first proved that the Constitution of the United States is a government proper, owing protection to individuals, and entitled to their obedience.

The people, Sir, in every State, live under two governments. They owe obedience to both. These governments, though distinct, are not adverse. Each has its separate sphere, and its peculiar powers and duties. It is not a contest between two sovereigns for the same power, like the wars of the rival houses in England; nor is it a dispute between a government *de facto* and a government *de jure.* It is the case of a division of powers between two governments, made by the people, to whom both are responsible. Neither can dispense with the duty which individuals owe to the other; neither can call itself master of the other: the people are masters of both. This division of power, it is true, is in a great measure unknown in Europe. It

is the peculiar system of America; and, though new and singular, it is not incomprehensible. The State constitutions are established by the people of the States. This Constitution is established by the people of all the States. How, then, can a State secede? How can a State undo what the whole people have done? How can she absolve her citizens from their obedience to the laws of the United States? How can she annul their obligations and oaths? How can the members of her legislature renounce their own oaths? Sir, secession, as a revolutionary right, is intelligible; as a right to be proclaimed in the midst of civil commotions, and asserted at the head of armies, I can understand it. But as a practical right, existing under the Constitution, and in conformity with its provisions, it seems to me to be nothing but a plain absurdity; for it supposes resistance to government, under the authority of government itself; it supposes dismemberment, without violating the principles of union; it supposes opposition to law, without crime; it supposes the violation of oaths, without responsibility; it supposes the total overthrow of government, without revolution.

The Constitution, Sir, regards itself as perpetual and immortal. It seeks to establish a union among the people of the States, which shall last through all time. Or, if the common fate of things human must be expected at some period to happen to it, yet that catastrophe is not anticipated.

The instrument contains ample provisions for its amendment, at all times; none for its abandonment, at any time. It declares that new States may come into the Union, but it does not declare that old States may go out. The Union is not a temporary partnership of States. It is the association of the people, under a constitution of government, uniting their power, joining together their highest interests, cementing their present enjoyments, and blending, in one indivisible mass, all their hopes for the future. Whatsoever is steadfast in just political principles; whatsoever is permanent in the structure of human society; whatsoever there is which can derive an enduring character from being founded on deep-laid principles of constitutional liberty and on the broad foundations of the public will, — all these unite to entitle this instrument to be regarded as a permanent constitution of government.

In the next place, Mr. President, I contend that there is a su-

preme law of the land, consisting of the Constitution, acts of Congress passed in pursuance of it, and the public treaties. This will not be denied, because such are the very words of the Constitution. But I contend, further, that it rightfully belongs to Congress, and to the courts of the United States, to settle the construction of this supreme law, in doubtful cases. This is denied; and here arises the great practical question, *Who is to construe finally the Constitution of the United States?* We all agree that the Constitution is the supreme law; but who shall interpret that law? In our system of the division of powers between different governments, controversies will necessarily sometimes arise, respecting the extent of the powers of each. Who shall decide these controversies? Does it rest with the general government, in all or any of its departments, to exercise the office of final interpreter? Or may each of the States, as well as the general government, claim this right of ultimate decision? The practical result of this whole debate turns on this point. The gentleman contends that each State may judge for itself of any alleged violation of the Constitution, and may finally decide for itself, and may execute its own decisions by its own power. All the recent proceedings in South Carolina are founded on this claim of right. Her convention has pronounced the revenue laws of the United States unconstitutional; and this decision she does not allow any authority of the United States to overrule or reverse. Of course she rejects the authority of Congress, because the very object of the ordinance is to reverse the decision of Congress; and she rejects, too, the authority of the courts of the United States, because she expressly prohibits all appeal to those courts. It is in order to sustain this asserted right of being her own judge, that she pronounces the Constitution of the United States to be but a compact, to which she is a party, and a sovereign party. If this be established, then the inference is supposed to follow, that, being sovereign, there is no power to control her decision; and her own judgment on her own compact is, and must be, conclusive.

I have already endeavored, Sir, to point out the practical consequences of this doctrine, and to show how utterly inconsistent it is with all ideas of regular government, and how soon its adoption would involve the whole country in revolution and absolute anarchy. I hope it is easy now to show, Sir, that a doc-

trine bringing such consequences with it is not well founded; that it has nothing to stand on but theory and assumption; and that it is refuted by plain and express constitutional provisions. I think the government of the United States does possess, in its appropriate departments, the authority of final decision on questions of disputed power. I think it possesses this authority, both by necessary implication and by express grant.

It will not be denied, Sir, that this authority naturally belongs to all governments. They all exercise it from necessity, and as a consequence of the exercise of other powers. The State governments themselves possess it, except in that class of questions which may arise between them and the general government, and in regard to which they have surrendered it, as well by the nature of the case as by clear constitutional provisions. In other and ordinary cases, whether a particular law be in conformity to the constitution of the State is a question which the State legislature or the State judiciary must determine. We all know that these questions arise daily in the State governments, and are decided by those governments; and I know no government which does not exercise a similar power.

Upon general principles, then, the government of the United States possesses this authority; and this would hardly be denied were it not that there are other governments. But since there are State governments, and since these, like other governments, ordinarily construe their own powers, if the government of the United States construes its own powers also, which construction is to prevail in the case of opposite constructions? And again, as in the case now actually before us, the State governments may undertake, not only to construe their own powers, but to decide directly on the extent of the powers of Congress. Congress has passed a law as being within its just powers; South Carolina denies that this law is within its just powers, and insists that she has the right so to decide this point, and that her decision is final. How are these questions to be settled?

In my opinion, Sir, even if the Constitution of the United States had made no express provision for such cases, it would yet be difficult to maintain, that, in a Constitution existing over four-and-twenty States, with equal authority over all, *one* could claim a right of construing it for the whole. This would seem a manifest impropriety; indeed, an absurdity. If the Constitu-

tion is a government existing over all the States, though with limited powers, it necessarily follows that, to the extent of those powers, it must be supreme. If it be not superior to the authority of a particular State, it is not a national government. But as it is a government, as it has a legislative power of its own, and a judicial power coextensive with the legislative, the inference is irresistible that this government, thus created *by* the whole and *for* the whole, must have an authority superior to that of the particular government of any one part. Congress is the legislature of all the people of the United States; the judiciary of the general government is the judiciary of all the people of the United States. To hold, therefore, that this legislature and this judiciary are subordinate in authority to the legislature and judiciary of a single State, is doing violence to all common sense, and overturning all established principles. Congress must judge of the extent of its own powers so often as it is called on to exercise them, or it cannot act at all; and it must also act independent of State control, or it cannot act at all.

The right of State interposition strikes at the very foundation of the legislative power of Congress. It possesses no effective legislative power, if such right of State interposition exists; because it can pass no law not subject to abrogation. It cannot make laws for the Union, if any part of the Union may pronounce its enactments void and of no effect. Its forms of legislation would be an idle ceremony, if, after all, any one of four-and-twenty States might bid defiance to its authority. Without express provision in the Constitution, therefore, Sir, this whole question is necessarily decided by those provisions which create a legislative power and a judicial power. If these exist in a government intended for the whole, the inevitable consequence is, that the laws of this legislative power and the decisions of this judicial power must be binding on and over the whole. No man can form the conception of a government existing over four-and-twenty States, with a regular legislative and judicial power, and of the existence at the same time of an authority, residing elsewhere, to resist, at pleasure or discretion, the enactments and the decisions of such a government. I maintain, therefore, Sir, that, from the nature of the case, and as an inference wholly unavoidable, the acts of Congress and the decisions of the national courts must be of higher authority than State

laws and State decisions. If this be not so, there is, there can be, no general government.

But, Mr. President, the Constitution has not left this cardinal point without full and explicit provisions. First, as to the authority of Congress. Having enumerated the specific powers conferred on Congress, the Constitution adds, as a distinct and substantive clause, the following, viz.: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof." If this means any thing, it means that Congress may judge of the true extent and just interpretation of the specific powers granted to it, and may judge also of what is necessary and proper for executing those powers. If Congress is to judge of what is necessary for the execution of its powers, it must, of necessity, judge of the extent and interpretation of those powers.

And in regard, Sir, to the judiciary, the Constitution is still more express and emphatic. It declares that the judicial power shall extend to all *cases* in law or equity arising under the Constitution, laws of the United States, and treaties; that there shall be *one* Supreme Court, and that this Supreme Court shall have appellate jurisdiction of all these cases, subject to such exceptions as Congress may make. It is impossible to escape from the generality of these words. If a case arises under the Constitution, that is, if a case arises depending on the construction of the Constitution, the judicial power of the United States extends to it. It reaches *the case, the question;* it attaches the power of the national judicature to the *case* itself, in whatever court it may arise or exist; and in this *case* the Supreme Court has appellate jurisdiction over all courts whatever. No language could provide with more effect and precision than is here done, for subjecting constitutional questions to the ultimate decision of the Supreme Court. And, Sir, this is exactly what the Convention found it necessary to provide for, and intended to provide for. It is, too, exactly what the people were universally told was done when they adopted the Constitution. One of the first resolutions adopted by the Convention was in these words, viz.: "That the jurisdiction of the national judiciary shall extend to cases which respect *the collection of the national reve-*

nue, and questions which involve the national peace and harmony." Now, Sir, this either had no sensible meaning at all, or else it meant that the jurisdiction of the national judiciary should extend to these questions, *with a paramount authority*. It is not to be supposed that the Convention intended that the power of the national judiciary should extend to these questions, and that the power of the judicatures of the States should also extend to them, *with equal power of final decision*. This would be to defeat the whole object of the provision. There were thirteen judicatures already in existence. The evil complained of, or the danger to be guarded against, was contradiction and repugnance in the decisions of these judicatures. If the framers of the Constitution meant to create a fourteenth, and yet not to give it power to revise and control the decisions of the existing thirteen, then they only intended to augment the existing evil and the apprehended danger by increasing still further the chances of discordant judgments. Why, Sir, has it become a settled axiom in politics that every government must have a judicial power coextensive with its legislative power? Certainly, there is only this reason, namely, that the laws may receive a uniform interpretation and a uniform execution. This object cannot be otherwise attained. A statute is what it is judicially interpreted to be; and if it be construed one way in New Hampshire, and another way in Georgia, there is no uniform law. One supreme court, with appellate and final jurisdiction, is the natural and only adequate means, in any government, to secure this uniformity. The Convention saw all this clearly; and the resolution which I have quoted, never afterwards rescinded, passed through various modifications, till it finally received the form which the article now bears in the Constitution.

It is undeniably true, then, that the framers of the Constitution intended to create a national judicial power, which should be paramount on national subjects. And after the Constitution was framed, and while the whole country was engaged in discussing its merits, one of its most distinguished advocates, Mr. Madison, told the people that it *was true, that, in controversies relating to the boundary between the two jurisdictions, the tribunal which is ultimately to decide is to be established under the general government*. Mr. Martin, who had been a member of the Convention, asserted the same thing to the legislature of Mary-

land, and urged it as a reason for rejecting the Constitution. Mr. Pinckney, himself also a leading member of the Convention, declared it to the people of South Carolina. Everywhere it was admitted, by friends and foes, that this power was in the Constitution. By some it was thought dangerous, by most it was thought necessary; but by all it was agreed to be a power actually contained in the instrument. The Convention saw the absolute necessity of some control in the national government over State laws. Different modes of establishing this control were suggested and considered. At one time, it was proposed that the laws of the States should, from time to time, be laid before Congress, and that Congress should possess a negative over them. But this was thought inexpedient and inadmissible; and in its place, and expressly as a substitute for it, the existing provision was introduced; that is to say, a provision by which the federal courts should have authority to overrule such State laws as might be in manifest contravention of the Constitution. The writers of the Federalist, in explaining the Constitution, while it was yet pending before the people, and still unadopted, give this account of the matter in terms, and assign this reason for the article as it now stands. By this provision Congress escaped the necessity of any revision of State laws, left the whole sphere of State legislation quite untouched, and yet obtained a security against any infringement of the constitutional power of the general government. Indeed, Sir, allow me to ask again, if the national judiciary was not to exercise a power of revision on constitutional questions over the judicatures of the States, why was any national judicature erected at all? Can any man give a sensible reason for having a judicial power in this government, unless it be for the sake of maintaining a uniformity of decision on questions arising under the Constitution and laws of Congress, and insuring its execution? And does not this very idea of uniformity necessarily imply that the construction given by the national courts is to be the prevailing construction? How else, Sir, is it possible that uniformity can be preserved?

Gentlemen appear to me, Sir, to look at but one side of the question. They regard only the supposed danger of trusting a government with the interpretation of its own powers. But will they view the question in its other aspect? Will they show

us how it is possible for a government to get along with four-and-twenty interpreters of its laws and powers? Gentlemen argue, too, as if, in these cases, the State would be always right, and the general government always wrong. But suppose the reverse; suppose the State wrong (and, since they differ, some of them must be wrong); are the most important and essential operations of the government to be embarrassed and arrested, because one State holds the contrary opinion? Mr. President, every argument which refers the constitutionality of acts of Congress to State decision appeals from the majority to the minority; it appeals from the common interest to a particular interest; from the counsels of all to the counsel of one; and endeavors to supersede the judgment of the whole by the judgment of a part.

I think it is clear, Sir, that the Constitution, by express provision, by definite and unequivocal words, as well as by necessary implication, has constituted the Supreme Court of the United States the appellate tribunal in all cases of a constitutional nature which assume the shape of a suit, in law or equity. And I think I cannot do better than to leave this part of the subject by reading the remarks made upon it in the convention of Connecticut, by Mr. Ellsworth; a gentleman, Sir, who has left behind him, on the records of the government of his country, proofs of the clearest intelligence and of the deepest sagacity, as well as of the utmost purity and integrity of character. "This Constitution," says he, "defines the extent of the powers of the general government. If the general legislature should, at any time, overleap their limits, the judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the Constitution does not authorize, it is void; and the judiciary power, the national judges, who, to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the States go beyond their limits, if they make a law which is a usurpation upon the general government, the law is void; and upright, independent judges will declare it to be so." Nor did this remain merely matter of private opinion. In the very first session of the first Congress, with all these well-known objects, both of the Convention and the people, full and fresh in his mind, Mr. Ellsworth, as is generally understood, reported the bill for

the organization of the judicial department, and in that bill made provision for the exercise of this appellate power of the Supreme Court, in all the proper cases, in whatsoever court arising; and this appellate power has now been exercised for more than forty years, without interruption, and without doubt.

As to the cases, Sir, which do not come before the courts, those political questions which terminate with the enactments of Congress, it is of necessity that these should be ultimately decided by Congress itself. Like other legislatures, it must be trusted with this power. The members of Congress are chosen by the people, and they are answerable to the people; like other public agents, they are bound by oath to support the Constitution. These are the securities that they will not violate their duty, nor transcend their powers. They are the same securities that prevail in other popular governments; nor is it easy to see how grants of power can be more safely guarded, without rendering them nugatory. If the case cannot come before the courts, and if Congress be not trusted with its decision, who shall decide it? The gentleman says, each State is to decide it for herself. If so, then, as I have already urged, what is law in one State is not law in another. Or, if the resistance of one State compels an entire repeal of the law, then a minority, and that a small one, governs the whole country.

Sir, those who espouse the doctrines of nullification reject, as it seems to me, the first great principle of all republican liberty; that is, that the majority *must* govern. In matters of common concern, the judgment of a majority *must* stand as the judgment of the whole. This is a law imposed on us by the absolute necessity of the case; and if we do not act upon it, there is no possibility of maintaining any government but despotism. We hear loud and repeated denunciations against what is called *majority government*. It is declared, with much warmth, that a majority government cannot be maintained in the United States. What, then, do gentlemen wish? Do they wish to establish a *minority* government? Do they wish to subject the will of the many to the will of the few? The honorable gentleman from South Carolina has spoken of absolute majorities and majorities concurrent; language wholly unknown to our Constitution, and to which it is not easy to affix definite

ideas. As far as I understand it, it would teach us that the absolute majority may be found in Congress, but the majority concurrent must be looked for in the States; that is to say, Sir, stripping the matter of this novelty of phrase, that the dissent of one or more States, as States, renders void the decision of a majority of Congress, so far as that State is concerned. And so this doctrine, running but a short career, like other dogmas of the day, terminates in nullification.

If this vehement invective against *majorities* meant no more than that, in the construction of government, it is wise to provide checks and balances, so that there should be various limitations on the power of the mere majority, it would only mean what the Constitution of the United States has already abundantly provided. It is full of such checks and balances. In its very organization, it adopts a broad and most effective principle in restraint of the power of mere majorities. A majority of the people elects the House of Representatives, but it does not elect the Senate. The Senate is elected by the States, each State having, in this respect, an equal power. No law, therefore, can pass, without the assent of the representatives of the people, and a majority of the representatives of the States also. A majority of the representatives of the people must concur, and a majority of the States must concur, in every act of Congres; and the President is elected on a plan compounded of both these principles. But having composed one house of representatives chosen by the people in each State, according to their numbers, and the other of an equal number of members from every State, whether larger or smaller, the Constitution gives to majorities in these houses thus constituted the full and entire power of passing laws, subject always to the constitutional restrictions and to the approval of the President. To subject them to any other power is clear usurpation. The majority of one house may be controlled by the majority of the other; and both may be restrained by the President's negative. These are checks and balances provided by the Constitution, existing in the government itself, and wisely intended to secure deliberation and caution in legislative proceedings. But to resist the will of the majority in both houses, thus constitutionally exercised; to insist on the lawfulness of interposition by an extraneous power; to claim the right of defeating the will of Congress,

by setting up against it the will of a single State, — is neither more nor less, as it strikes me, than a plain attempt to overthrow the government. The constituted authorities of the United States are no longer a government, if they be not masters of their own will; they are no longer a government, if an external power may arrest their proceedings; they are no longer a government, if acts passed by both houses, and approved by the President, may be nullified by State vetoes or State ordinances. Does any one suppose it could make any difference, as to the binding authority of an act of Congress, and of the duty of a State to respect it, whether it passed by a mere majority of both houses, or by three fourths of each, or the unanimous vote of each? Within the limits and restrictions of the Constitution, the government of the United States, like all other popular governments, acts by majorities. It can act no otherwise. Whoever, therefore, denounces the government of majorities, denounces the government of his own country, and denounces all free governments. And whoever would restrain these majorities, while acting within their constitutional limits, by an external power, whatever he may intend, asserts principles which, if adopted, can lead to nothing else than the destruction of the government itself.

Does not the gentleman perceive, Sir, how his argument against majorities might here be retorted upon him? Does he not see how cogently he might be asked, whether it be the character of nullification to practise what it preaches? Look to South Carolina, at the present moment. How far are the rights of minorities there respected? I confess, Sir, I have not known, in peaceable times, the power of the majority carried with a higher hand, or upheld with more relentless disregard of the rights, feelings, and principles of the minority; — a minority embracing, as the gentleman himself will admit, a large portion of the worth and respectability of the State; a minority comprehending in its numbers men who have been associated with him, and with us, in these halls of legislation; men who have served their country at home and honored it abroad; men who would cheerfully lay down their lives for their native State, in any cause which they could regard as the cause of honor and duty; men above fear, and above reproach; whose deepest grief and distress spring from the conviction, that the present proceed-

ings of the State must ultimately reflect discredit upon her. How is this minority, how are these men regarded? They are entralled and disfranchised by ordinances and acts of legislation: subjected to tests and oaths, incompatible, as they conscientiously think, with oaths already taken, and obligations already assumed, they are proscribed and denounced, as recreants to duty and patriotism, and slaves to a foreign power. Both the spirit which pursues them, and the positive measures which emanate from that spirit, are harsh and proscriptive beyond all precedent within my knowledge, except in periods of professed revolution.

It is not, Sir, one would think, for those who approve these proceedings to complain of the power of majorities.

Mr. President, all popular governments rest on two principles, or two assumptions: —

First, That there is so far a common interest among those over whom the government extends, as that it may provide for the defence, protection, and good government of the whole, without injustice or oppression to parts: and

Secondly, That the representatives of the people, and especially the people themselves, are secure against general corruption, and may be trusted, therefore, with the exercise of power.

Whoever argues against these principles argues against the practicability of all free governments. And whoever admits these, must admit, or cannot deny, that power is as safe in the hands of Congress as in those of other representative bodies. Congress is not irresponsible. Its members are agents of the people, elected by them, answerable to them, and liable to be displaced or superseded, at their pleasure; and they possess as fair a claim to the confidence of the people, while they continue to deserve it, as any other public political agents.

If, then, Sir, the manifest intention of the Convention, and the contemporary admission of both friends and foes, prove any thing; if the plain text of the instrument itself, as well as the necessary implication from other provisions, prove any thing; if the early legislation of Congress, the course of judicial decisions, acquiesced in by all the States for forty years, prove any thing, — then it is proved that there is a supreme law, and a final interpreter.

My fourth and last proposition, Mr. President, was, that any

attempt by a State to abrogate or nullify acts of Congress is a usurpation on the powers of the general government and on the equal rights of other States, a violation of the Constitution, and a proceeding essentially revolutionary. This is undoubtedly true, if the preceding propositions be regarded as proved. If the government of the United States be trusted with the duty, in any department, of declaring the extent of its own powers, then a State ordinance, or act of legislation, authorizing resistance to an act of Congress, on the alleged ground of its unconstitutionality, is manifestly a usurpation upon its powers. If the States have equal rights in matters concerning the whole, then for one State to set up her judgment against the judgment of the rest, and to insist on executing that judgment by force, is also a manifest usurpation on the rights of other States. If the Constitution of the United States be a government proper, with authority to pass laws, and to give them a uniform interpretation and execution, then the interposition of a State, to enforce her own construction, and to resist, as to herself, that law which binds the other States, is a violation of the Constitution.

If that be revolutionary which arrests the legislative, executive, and judicial power of government, dispenses with existing oaths and obligations of obedience, and elevates another power to supreme dominion, then nullification is revolutionary. Or if that be revolutionary the natural tendency and practical effect of which are to break the Union into fragments, to sever all connection among the people of the respective States, and to prostrate this general government in the dust, then nullification is revolutionary.

Nullification, Sir, is as distinctly revolutionary as secession; but I cannot say that the revolution which it seeks is one of so respectable a character. Secession would, it is true, abandon the Constitution altogether; but then it would profess to abandon it. Whatever other inconsistencies it might run into, one, at least, it would avoid. It would not belong to a government, while it rejected its authority. It would not repel the burden, and continue to enjoy the benefits. It would not aid in passing laws which others are to obey, and yet reject their authority as to itself. It would not undertake to reconcile obedience to pub lic authority with an asserted right of command over that same

authority. It would not be in the government, and above the government, at the same time. But though secession may be a more respectable mode of attaining the object than nullification, it is not more truly revolutionary. Each, and both, resist the constitutional authorities; each, and both, would sever the Union, and subvert the government.

Mr. President, having detained the Senate so long already, I will not now examine at length the ordinance and laws of South Carolina. These papers are well drawn for their purpose. Their authors understood their own objects. They are called a peaceable remedy, and we have been told that South Carolina, after all, intends nothing but a lawsuit. A very few words, Sir, will show the nature of this peaceable remedy, and of the lawsuit which South Carolina contemplates.

In the first place, the ordinance declares the law of last July, and all other laws of the United States laying duties, to be absolutely null and void, and makes it unlawful for the constituted authorities of the United States to enforce the payment of such duties. It is therefore, Sir, an indictable offence, at this moment, in South Carolina, for any person to be concerned in collecting revenue under the laws of the United States. It being declared, by what is considered a fundamental law of the State, unlawful to collect these duties, an indictment lies, of course, against any one concerned in such collection; and he is, on general principles, liable to be punished by fine and imprisonment. The terms, it is true, are, that it is unlawful "to enforce the payment of duties"; but every custom-house officer enforces payment while he detains the goods in order to obtain such payment. The ordinance, therefore, reaches every body concerned in the collection of the duties.

This is the first step in the prosecution of the peaceable remedy. The second is more decisive. By the act commonly called the *replevin* law, any person, whose goods are seized or detained by the collector for the payment of duties, may sue out a writ of replevin, and, by virtue of that writ, the goods are to be restored to him. A writ of replevin is a writ which the sheriff is bound to execute, and for the execution of which he is bound to employ force, if necessary. He may call out the *posse*, and must do so, if resistance be made. This *posse* may be armed or unarmed. It may come forth with military array.

and under the lead of military men. Whatever number of troops may be assembled in Charleston, they may be summoned, with the governor, or commander-in-chief, at their head, to come in aid of the sheriff. It is evident, then, Sir, that the whole military power of the State is to be employed, if necessary, in dispossessing the custom-house officers, and in seizing and holding the goods, without paying the duties. This is the second step in the peaceable remedy.

Sir, whatever pretences may be set up to the contrary, this is the direct application of force, and of military force. It is unlawful, in itself, to replevy goods in the custody of the collectors. But this unlawful act is to be done, and it is to be done by power. Here is a plain interposition, by physical force, to resist the laws of the Union. The legal mode of collecting duties is to detain the goods till such duties are paid or secured. But force comes, and overpowers the collector and his assistants, and takes away the goods, leaving the duties unpaid. There cannot be a clearer case of forcible resistance to law. And it is provided that the goods thus seized shall be held against any attempt to retake them, by the same force which seized them.

Having thus dispossessed the officers of the government of the goods, without payment of duties, and seized and secured them by the strong arm of the State, only one thing more remains to be done, and that is, to cut off all possibility of legal redress; and that, too, is accomplished, or thought to be accomplished. The ordinance declares, *that all judicial proceedings, founded on the revenue laws* (including, of course, proceedings in the courts of the United States), *shall be null and void.* This nullifies the judicial power of the United States. Then comes the test-oath act. This requires all State judges and jurors in the State courts to swear that they will execute the ordinance, and all acts of the legislature passed in pursuance thereof. The ordinance declares, that no appeal shall be allowed from the decision of the State courts to the Supreme Court of the United States; and the replevin act makes it an indictable offence for any clerk to furnish a copy of the record, for the purpose of such appeal.

The two principal provisions on which South Carolina relies, to resist the laws of the United States, and nullify the authority of this government, are, therefore, these: —

1. A forcible seizure of goods, before duties are paid or secured, by the power of the State, civil and military.

2. The taking away, by the most effectual means in her power, of all legal redress in the courts of the United States; the confining of judicial proceedings to her own State tribunals; and the compelling of her judges and jurors of these her own courts to take an oath, beforehand, that they will decide all cases according to the ordinance, and the acts passed under it; that is, that they will decide the cause one way. They do not swear to *try* it, on its own merits; they only swear to *decide* it as nullification requires.

The character, Sir, of these provisions defies comment. Their object is as plain as their means are extraordinary. They propose direct resistance, by the whole power of the State, to laws of Congress, and cut off, by methods deemed adequate, any redress by legal and judicial authority. They arrest legislation, defy the executive, and banish the judicial power of this government. They authorize and command acts to be done, and done by force, both of numbers and of arms, which, if done, and done by force, are clearly acts of rebellion and treason.

Such, Sir, are the laws of South Carolina; such, Sir, is the peaceable remedy of nullification. Has not nullification reached, Sir, even thus early, that point of direct and forcible resistance to law to which I intimated, three years ago, it plainly tended?

And now, Mr. President, what is the reason for passing laws like these? What are the oppressions experienced under the Union, calling for measures which thus threaten to sever and destroy it? What invasions of public liberty, what ruin to private happiness, what long list of rights violated, or wrongs unredressed, is to justify to the country, to posterity, and to the world, this assault upon the free Constitution of the United States, this great and glorious work of our fathers? At this very moment, Sir, the whole land smiles in peace, and rejoices in plenty. A general and a high prosperity pervades the country; and, judging by the common standard, by increase of population and wealth, or judging by the opinions of that portion of her people not embarked in these dangerous and desperate measures, this prosperity overspreads South Carolina herself.

Thus happy at home, our country, at the same time, holds high the character of her institutions, her power, her rapid growth, and her future destiny, in the eyes of all foreign states. One danger only creates hesitation; one doubt only exists, to darken the otherwise unclouded brightness of that aspect which she exhibits to the view and to the admiration of the world. Need I say, that that doubt respects the permanency of our Union? and need I say, that that doubt is now caused, more than any thing else, by these very proceedings of South Carolina? Sir, all Europe is, at this moment, beholding us, and looking for the issue of this controversy; those who hate free institutions, with malignant hope; those who love them, with deep anxiety and shivering fear.

The cause, then, Sir, the cause! Let the world know the cause which has thus induced one State of the Union to bid defiance to the power of the whole, and openly to talk of secession. Sir, the world will scarcely believe that this whole controversy, and all the desperate measures which its support requires, save no other foundation than a difference of opinion upon a provision of the Constitution, between a majority of the people of South Carolina, on one side, and a vast majority of the whole people of the United States, on the other. It will not credit the fact, it will not admit the possibility, that, in an enlightened age, in a free, popular republic, under a constitution where the people govern, as they must always govern under such systems, by majorities, at a time of unprecedented prosperity, without practical oppression, without evils such as may not only be pretended, but felt and experienced, — evils not slight or temporary, but deep, permanent, and intolerable, — a single State should rush into conflict with all the rest, attempt to put down the power of the Union by her own laws, and to support those laws by her military power, and thus break up and destroy the world's last hope. And well the world may be incredulous. We, who see and hear it, can ourselves hardly yet believe it. Even after all that had preceded it, this ordinance struck the country with amazement. It was incredible and inconceivable that South Carolina should plunge headlong into resistance to the laws on a matter of opinion, and on a question in which the preponderance of opinion, both of the present day and of all past time, was so overwhelmingly against her. The ordinance declares

that Congress has exceeded its just power by laying duties on imports, intended for the protection of manufactures. This is the opinion of South Carolina; and on the strength of that opinion she nullifies the laws. Yet has the rest of the country no right to its opinion also? Is one State to sit sole arbitress? She maintains that those laws are plain, deliberate, and palpable violations of the Constitution; that she has a sovereign right to decide this matter; and that, having so decided, she is authorized to resist their execution by her own sovereign power; and she declares that she will resist it, though such resistance should shatter the Union into atoms.

Mr. President, I do not intend to discuss the propriety of these laws at large; but I will ask, How are they shown to be thus plainly and palpably unconstitutional? Have they no countenance at all in the Constitution itself? Are they quite new in the history of tne government? Are they a sudden and violent usurpation on the rights of the States? Sir, what will the civilized world say, what will posterity say, when they learn that similar laws have existed from the very foundation of the government, that for thirty years the power was never questioned, and that no State in the Union has more freely and unequivocally admitted it than South Carolina herself?

To lay and collect duties and imposts is an *express power* granted by the Constitution to Congress. It is, also, an *exclusive power;* for the Constitution as expressly prohibits all the States from exercising it themselves. This express and exclusive power is unlimited in the terms of the grant, but is attended with two specific restrictions: first, that all duties and imposts shall be equal in all the States; second, that no duties shall be laid on exports. The power, then, being granted, and being attended with these two restrictions, and no more, who is to impose a third restriction on the general words of the grant? If the power to lay duties, as known among all other nations, and as known in all our history, and as it was perfectly understood when the Constitution was adopted, includes a right of discriminating while exercising the power, and of laying some duties heavier and some lighter, for the sake of encouraging our own domestic products, what authority is there for giving to the words used in the Constitution a new, narrow, and unusual meaning? All the limitations which the Constitution intended,

it has expressed; and what it has left unrestricted is as much a part of its will as the restraints which it has imposed.

But these laws, it is said, are unconstitutional on account of the *motive*. How, Sir, can a law be examined on any such ground? How is the motive to be ascertained? One house, or one member, may have one motive; the other house, or another member, another. One motive may operate to-day, and another to-morrow. Upon any such mode of reasoning as this, one law might be unconstitutional now, and another law, in exactly the same words, perfectly constitutional next year. Besides, articles may not only be taxed for the purpose of protecting home products, but other articles may be left free, for the same purpose and with the same motive. A law, therefore, would become unconstitutional from what it omitted, as well as from what it contained. Mr. President, it is a settled principle, acknowledged in all legislative halls, recognized before all tribunals, sanctioned by the general sense and understanding of mankind, that there can be no inquiry into the motives of those who pass laws, for the purpose of determining on their validity. If the law be within the fair meaning of the words in the grant of the power, its authority must be admitted until it is repealed. This rule, everywhere acknowledged, everywhere admitted, is so universal and so completely without exception, that even an allegation of fraud, in the majority of a legislature, is not allowed as a ground to set aside a law.

But, Sir, is it true that the motive for these laws is such as is stated? I think not. The great object of all these laws is, unquestionably, revenue. If there were no occasion for revenue, the laws would not have been passed; and it is notorious that almost the entire revenue of the country is derived from them. And as yet we have collected none too much revenue. The treasury has not been more reduced for many years than it is at the present moment. All that South Carolina can say is, that, in passing the laws which she now undertakes to nullify, *particular imported articles were taxed, from a regard to the protection of certain articles of domestic manufacture, higher than they would have been had no such regard been entertained.* And she insists that, according to the Constitution, no such discrimination can be allowed; that duties should be laid for revenue, and revenue only; and that it is unlawful to have reference, in any

case, to protection. In other words, she denies the power of DISCRIMINATION. She does not, and cannot, complain of excessive taxation; on the contrary, she professes to be willing to pay any amount for revenue, merely as revenue; and up to the present moment there is no surplus of revenue. Her grievance, then, that plain and palpable violation of the Constitution which she insists has taken place, is simply the exercise of the power of DISCRIMINATION. Now, Sir, is the exercise of this power of discrimination plainly and palpably unconstitutional?

I have already said, the power to lay duties is given by the Constitution in broad and general terms. There is also conferred on Congress the whole power of regulating commerce, in another distinct provision. Is it clear and palpable, Sir, can any man say it is a case beyond doubt, that, under these two powers, Congress may not justly *discriminate*, in laying duties, *for the purpose of countervailing the policy of foreign nations, or of favoring our own home productions?* Sir, what ought to conclude this question for ever, as it would seem to me, is, that the regulation of commerce and the imposition of duties are, in all commercial nations, powers avowedly and constantly exercised for this very end. That undeniable truth ought to settle the question; because the Constitution ought to be considered, when it uses well-known language, as using it in its well-known sense. But it is equally undeniable, that it has been, from the very first, fully believed that this power of discrimination was conferred on Congress; and the Constitution was itself recommended, urged upon the people, and enthusiastically insisted on in some of the States, for that very reason. Not that, at that time, the country was extensively engaged in manufactures, especially of the kinds now existing. But the trades and crafts of the seaport towns, the business of the artisans and manual laborers, — those employments, the work in which supplies so great a portion of the daily wants of all classes, — all these looked to the new Constitution as a source of relief from the severe distress which followed the war. It would, Sir, be unpardonable, at so late an hour, to go into details on this point; but the truth is as I have stated. The papers of the day, the resolutions of public meetings, the debates in the conventions, all that we open our eyes upon in the history of the times, prove it.

Sir, the honorable gentleman from South Carolina has re-

ferred to two incidents connected with the proceedings of the Convention at Philadelphia, which he thinks are evidence to show that the power of protecting manufactures by laying duties, and by commercial regulations, was not intended to be given to Congress. The first is, as he says, that a power to protect manufactures was expressly proposed, but not granted. I think, Sir, the gentleman is quite mistaken in relation to this part of the proceedings of the Convention. The whole history of the occurrence to which he alludes is simply this. Towards the conclusion of the Convention, after the provisions of the Constitution had been mainly agreed upon, after the power to lay duties and the power to regulate commerce had both been granted, a long list of propositions was made and referred to the committee, containing various miscellaneous powers, some or all of which it was thought might be properly vested in Congress. Among these was a power to establish a university; to grant charters of incorporation; to regulate stage-coaches on the post-roads; and also the power to which the gentleman refers, and which is expressed in these words: "To establish public institutions, rewards, and immunities, for the promotion of agriculture, commerce, trades, and manufactures." The committee made no report on this or various other propositions in the same list. But the only inference from this omission is, that neither the committee nor the Convention thought it proper to authorize Congress "to establish public institutions, rewards, and immunities," for the promotion of manufactures, and other interests. The Convention supposed it had done enough, — at any rate, it had done all it intended, — when it had given to Congress, in general terms, the power to lay imposts and the power to regulate trade. It is not to be argued, from its omission to give more, that it meant to take back what it had already given. It had given the impost power; it had given the regulation of trade; and it did not deem it necessary to give the further and distinct power of establishing public institutions.

The other fact, Sir, on which the gentleman relies, is the declaration of Mr. Martin to the legislature of Maryland. The gentleman supposes Mr. Martin to have urged against the Constitution, that it did not contain the power of protection. But if the gentleman will look again at what Mr. Martin said, he will find, I think, that what Mr. Martin complained of was, that

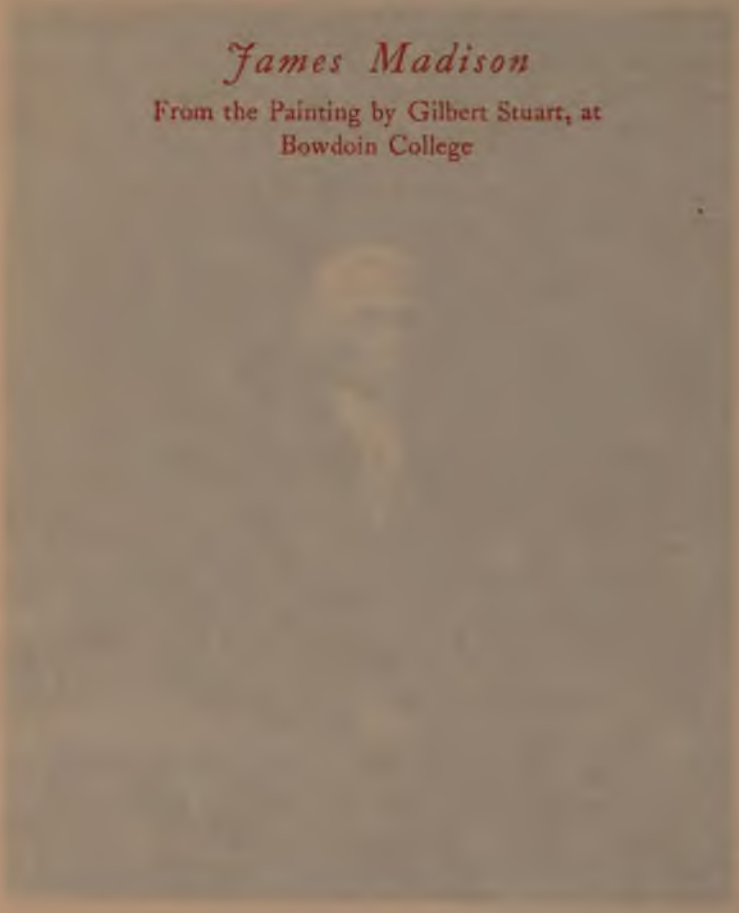
the Constitution, by its prohibitions on the States, had taken away from the States themselves the power of protecting their own manufactures by duties on imports. This is undoubtedly true; but I find no expression of Mr. Martin intimating that the Constitution had not conferred on Congress the same power which it had thus taken from the States.

But, Sir, let us go to the first Congress; let us look in upon this and the other house, at the first session of their organization.

We see, in both houses, men distinguished among the framers, friends, and advocates of the Constitution. We see in both, those who had drawn, discussed, and matured the instrument in the Convention, explained and defended it before the people, and were now elected members of Congress, to put the new government into motion, and to carry the powers of the Constitution into beneficial execution. At the head of the government was WASHINGTON himself, who had been President of the Convention; and in his cabinet were others most thoroughly acquainted with the history of the Constitution, and distinguished for the part taken in its discussion. If these persons were not acquainted with the meaning of the Constitution, if they did not understand the work of their own hands, who can understand it, or who shall now interpret it to us?

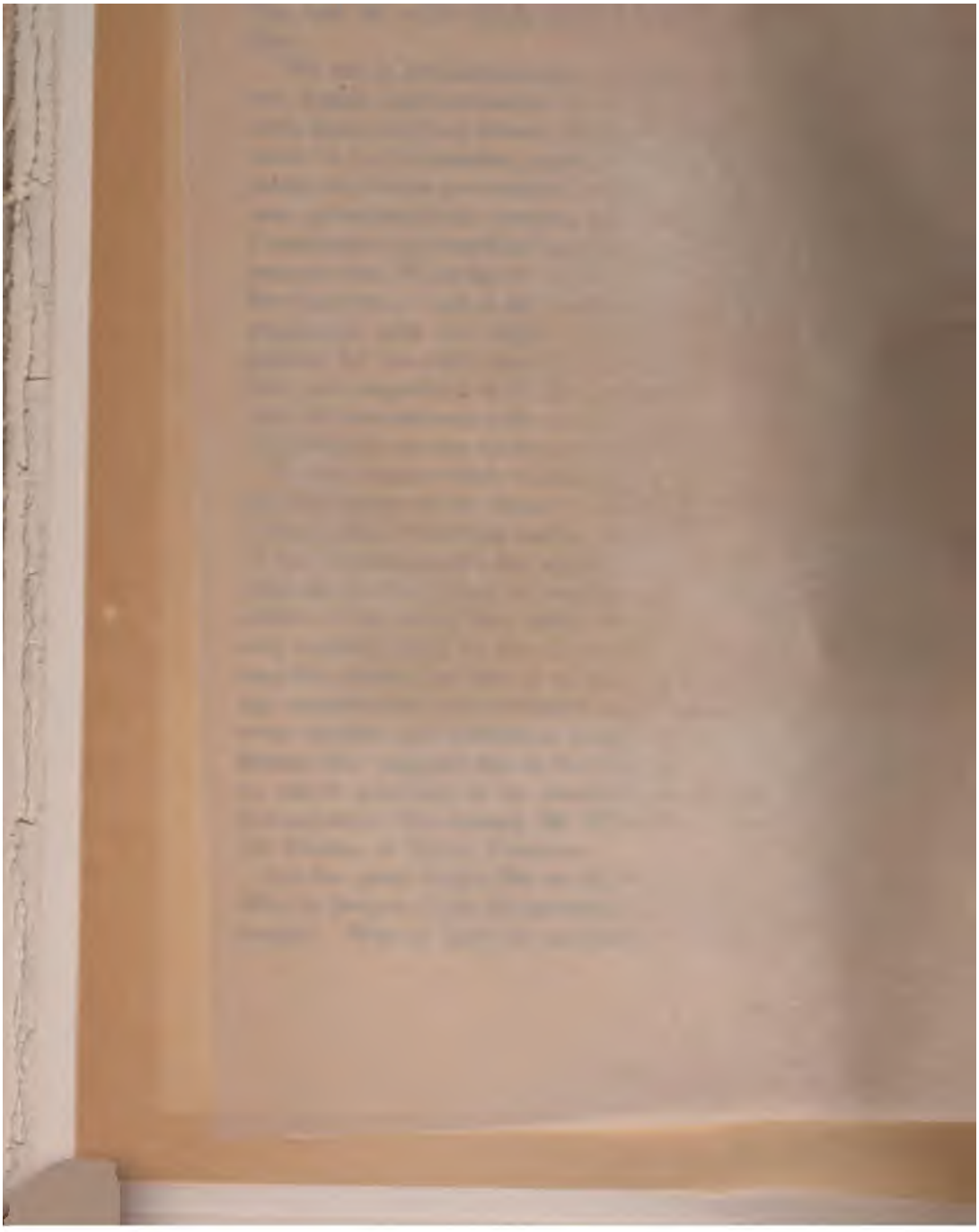
Sir, the volume which records the proceedings and debates of the first session of the House of Representatives lies before me. I open it, and I find that, having provided for the administration of the necessary oaths, the very first measure proposed for consideration is, the laying of imposts; and in the very first committee of the whole into which the House of Representatives ever resolved itself, on this its earliest subject, and in this its very first debate, the duty of so laying the imposts as to encourage manufactures was advanced and enlarged upon by almost every speaker, and doubted or denied by none. The first gentleman who suggests this as the clear duty of Congress, and as an object necessary to be attended to, is Mr. Fitzsimons, of Pennsylvania; the second, Mr. White, of VIRGINIA; the third, Mr. Tucker, of SOUTH CAROLINA.

But the great leader, Sir, on this occasion, was Mr. Madison. Was *he* likely to know the intentions of the Convention and the people? Was *he* likely to understand the Constitution? At



James Madison

From the Painting by Gilbert Stuart, at
Bowdoin College



the second sitting of the committee, Mr. Madison explained his own opinions of the duty of Congress, fully and explicitly. I must not detain you, Sir, with more than a few short extracts from these opinions, but they are such as are clear, intelligible, and decisive. "The States," says he, "that are most advanced in population, and ripe for manufactures, ought to have their particular interest attended to, in some degree. While these States retained the power of making regulations of trade, they had the power to cherish such institutions. By adopting the present Constitution, they have thrown the exercise of this power into other hands; they must have done this with an expectation that those interests would not be neglected here." In another report of the same speech, Mr. Madison is represented as using still stronger language; as saying that, the Constitution having taken this power away from the States and conferred it on Congress, it would be a *fraud* on the States and on the people were Congress to refuse to exercise it.

Mr. Madison argues, Sir, on this early and interesting occasion, very justly and liberally, in favor of the general principles of unrestricted commerce. But he argues, also, with equal force and clearness, for certain important exceptions to these general principles. The first, Sir, respects those manufactures which had been brought forward under encouragement by the State governments. "It would be cruel," says Mr. Madison, "to neglect them, and to divert their industry into other channels; for it is not possible for the hand of man to shift from one employment to another without being injured by the change." Again: "There may be some manufactures which, being once formed, can advance towards perfection without any adventitious aid; while others, for want of the fostering hand of government, will be unable to go on at all. Legislative provision, therefore, will be necessary to collect the proper objects for this purpose; and this will form another exception to my general principle." And again: "The next exception that occurs is one on which great stress is laid by some well-informed men, and this with great plausibility; that each nation should have, within itself, the means of defence, independent of foreign supplies; that, in whatever relates to the operations of war, no State ought to depend upon a precarious supply from any part of the world. There may be some truth in this remark; and therefore it is proper for legislative attention."

In the same debate, Sir, Mr. Burk, from South Carolina, supported a duty on hemp, for the express purpose of encouraging its growth on the strong lands of South Carolina. "Cotton," he said, "was also in contemplation among them, and, if good seed could be procured, he hoped might succeed." Afterwards, Sir, the cotton was obtained, its culture was protected, and it did succeed. Mr. Smith, a very distinguished member from the same State, observed: "It has been said, and justly, that the States which adopted this Constitution expected its administration would be conducted with a favorable hand. The manufacturing States wished the encouragement of manufactures, the maritime States the encouragement of ship-building, and the agricultural States the encouragement of agriculture."

Sir, I will detain the Senate by reading no more extracts from these debates. I have already shown a majority of the members of South Carolina, in this very first session, acknowledging this power of protection, voting for its exercise, and proposing its extension to their own products. Similar propositions came from Virginia; and, indeed, Sir, in the whole debate, at whatever page you open the volume, you find the power admitted, and you find it applied to the protection of particular articles, or not applied, according to the discretion of Congress. No man denied the power, no man doubted it; the only questions were, in regard to the several articles proposed to be taxed, whether they were fit subjects for protection, and what the amount of that protection ought to be. Will gentlemen, Sir, now answer the argument drawn from these proceedings of the first Congress? Will they undertake to deny that that Congress did act on the avowed principle of protection? Or, if they admit it, will they tell us how those who framed the Constitution fell, thus early, into this great mistake about its meaning? Will they tell us how it should happen that they had so soon forgotten their own sentiments and their own purposes? I confess I have seen no answer to this argument, nor any respectable attempt to answer it. And, Sir, how did this debate terminate? What law was passed? There it stands, Sir, among the statutes, the second law in the book. It has a *preamble*, and that preamble expressly recites, that the duties which it imposes are laid "for the support of government, for the discharge of the debts of the United States, and *the encouragement and pro-*

tection of manufactures." Until, Sir, this early legislation, thus coeval with the Constitution itself, thus full and explicit, can be explained away, no man can doubt of the meaning of that instrument, in this respect.

Mr. President, this power of *discrimination*, thus admitted, avowed, and practised upon in the first revenue act, has never been denied or doubted until within a few years past. It was not at all doubted in 1816, when it became necessary to adjust the revenue to a state of peace. On the contrary, the power was then exercised, not without opposition as to its expediency, but, as far as I remember or have understood, without the slightest opposition founded on any supposed want of constitutional authority. Certainly, SOUTH CAROLINA did not doubt it. The tariff of 1816 was introduced, carried through, and established, under the lead of South Carolina. Even the minimum policy is of South Carolina origin. The honorable gentleman himself supported, and ably supported, the tariff of 1816. He has informed us, Sir, that his speech on that occasion was sudden and off-hand, he being called up by the request of a friend. I am sure the gentleman so remembers it, and that it was so; but there is, nevertheless, much method, arrangement, and clear exposition in that extempore speech. It is very able, very, very much to the point, and very decisive. And in another speech, delivered two months earlier, on the proposition to repeal the internal taxes, the honorable gentleman had touched the same subject, and had declared "*that a certain encouragement ought to be extended at least to our woollen and cotton manufactures.*" I do not quote these speeches, Sir, for the purpose of showing that the honorable gentleman has changed his opinion: my object is other and higher. I do it for the sake of saying that that cannot be so plainly and palpably unconstitutional as to warrant resistance to law, nullification, and revolution, which the honorable gentleman and his friends have heretofore agreed to and acted upon without doubt and without hesitation. Sir, it is no answer to say that the tariff of 1816 was a revenue bill. So are they all revenue bills. The point is, and the truth is, that the tariff of 1816, like the rest, *did discriminate;* it did distinguish one article from another; it did lay duties for protection. Look to the case of coarse cottons under the minimum calculation: the duty on these was from sixty to eighty per

cent. Something beside revenue, certainly, was intended in this; and, in fact, the law cut up our whole commerce with India in that article.

It is, Sir, only within a few years that Carolina has denied the constitutionality of these protective laws. The gentleman himself has narrated to us the true history of her proceedings on this point. He says, that, after the passing of the law of 1828, despairing then of being able to abolish the system of protection, political men went forth among the people, and set up the doctrine that the system was unconstitutional. "*And the people*," says the honorable gentleman, "*received the doctrine*." This, I believe, is true, Sir. The people did then receive the doctrine; they had never entertained it before. Down to that period, the constitutionality of these laws had been no more doubted in South Carolina than elsewhere. And I suspect it is true, Sir, and I deem it a great misfortune, that, to the present moment, a great portion of the people of the State have never yet seen more than one side of the argument. I believe that thousands of honest men are involved in scenes now passing, led away by one-sided views of the question, and following their leaders by the impulses of an unlimited confidence. Depend upon it, Sir, if we can avoid the shock of arms, a day for reconsideration and reflection will come; truth and reason will act with their accustomed force, and the public opinion of South Carolina will be restored to its usual constitutional and patriotic tone.

But, Sir, I hold South Carolina to her ancient, her cool, her uninfluenced, her deliberate opinions. I hold her to her own admissions, nay, to her own claims and pretensions, in 1789, in the first Congress, and to her acknowledgments and avowed sentiments through a long series of succeeding years. I hold her to the principles on which she led Congress to act in 1816; or, if she have changed her own opinions, I claim some respect for those who still retain the same opinions. I say she is precluded from asserting that doctrines, which she has herself so long and so ably sustained, are plain, palpable, and dangerous violations of the Constitution.

Mr. President, if the friends of nullification should be able to propagate their opinions, and give them practical effect, they would, in my judgment, prove themselves the most skilful "ar-

chitects of ruin," the most effectual extinguishers of high-raised expectation, the greatest blasters of human hopes, that any age has produced. They would stand up to proclaim, in tones which would pierce the ears of half the human race, that the last great experiment of representative government had failed. They would send forth sounds, at the hearing of which the doctrine of the divine right of kings would feel, even in its grave, a returning sensation of vitality and resuscitation. Millions of eyes, of those who now feed their inherent love of liberty on the success of the American example, would turn away from beholding our dismemberment, and find no place on earth whereon to rest their gratified sight. Amidst the incantations and orgies of nullification, secession, disunion, and revolution, would be celebrated the funeral rites of constitutional and republican liberty.

But, Sir, if the government do its duty, if it act with firmness and with moderation, these opinions cannot prevail. Be assured, Sir, be assured, that, among the political sentiments of this people, the love of union is still uppermost. They will stand fast by the Constitution, and by those who defend it. I rely on no temporary expedients, on no political combination; but I rely on the true American feeling, the genuine patriotism of the people, and the imperative decision of the public voice. Disorder and confusion, indeed, may arise; scenes of commotion and contest are threatened, and perhaps may come. With my whole heart, I pray for the continuance of the domestic peace and quiet of the country. I desire, most ardently, the restoration of affection and harmony to all its parts. I desire that every citizen of the whole country may look to this government with no other sentiments than those of grateful respect and attachment. But I cannot yield even to kind feelings the cause of the Constitution, the true glory of the country, and the great trust which we hold in our hands for succeeding ages. If the Constitution cannot be maintained without meeting these scenes of commotion and contest, however unwelcome, they must come. We cannot, we must not, we dare not, omit to do that which, in our judgment, the safety of the Union requires. Not regardless of consequences, we must yet meet consequences; seeing the hazards which surround the discharge of public duty, it must yet be discharged. For myself, Sir, I shun no responsibility justly de-

volving on me, here or elsewhere, in attempting to maintain the cause. I am bound to it by indissoluble ties of affection and duty, and I shall cheerfully partake in its fortunes and its fate. I am ready to perform my own appropriate part, whenever and wherever the occasion may call on me, and to take my chance among those upon whom blows may fall first and fall thickest. I shall exert every faculty I possess in aiding to prevent the Constitution from being nullified, destroyed, or impaired; and even should I see it fall, I will still, with a voice feeble, perhaps, but earnest as ever issued from human lips, and with fidelity and zeal which nothing shall extinguish, call on the PEOPLE to come to its rescue.

The Removal of the Deposits*

THE charter of the Bank of the United States provided that the public moneys should be deposited in the bank, subject to removal by the Secretary of the Treasury, on grounds to be submitted to Congress. In the session of 1832, Congress had passed a resolution, by a very large majority, that the public deposits were safe in the custody of the Bank of the United States. General Jackson, having applied his *veto* to the bill for renewing the charter of the bank, was determined, notwithstanding this expression of the opinion of Congress, that the public deposits should be transferred to an association of selected State banks. The Secretary of the Treasury (Mr. M'Lane), having declined to order the transfer, was appointed Secretary of State, in the expectation that his successor (Mr. Duane) would execute the President's will in that respect. On the 10th of September, 1833, an elaborate paper was read by General Jackson to the Cabinet, announcing his reasons for the removal of the deposits, and appointing the 1st of October as the day when it should take place. On the 21st of September, Mr. Duane made known to the President his intention not to order the removal. He was dismissed from office, and Mr. Taney, the present Chief Justice, appointed in his place, by whom the requsite order for the removal of the public moneys to the State banks was immediately given.

This measure produced a great derangement in the business of the country, and an almost total suspension of the accustomed action of the financial system. Universal distress ensued. Memorials on the subject were addressed to both houses of Congress from the principal cities, and very many of the public bodies, in the United States. These memorials formed the subject of prolonged and animated debate during the session of 1833–34.

On the 20th of January, Mr. Webster presented to the Senate a series

* Remarks, on different occasions, on the Removal of the Deposits, and on the subject of a National Bank, delivered in the Senate of the United States, in the course of the session of 1833–34.

of resolutions adopted at a public meeting in Boston, of a remarkably temperate and argumentative character, in which the prevailing distress was traced mainly to the removal of the deposits, and the restoration of the friendly relations between the government and the Bank of the United States was mentioned as the only measure of relief likely to prove effectual. It was stated in one of the resolutions, that the meeting consisted of persons "of all classes and professions, entertaining various and opposite opinions upon the question of rechartering the existing national bank or of chartering a new one, and that few of them have any pecuniary interest involved in the fate of that institution."

The resolutions having been read, Mr. Webster addressed the Senate as follows: —

Mr. President, — I wish to bear unequivocal and decided testimony to the respectability, intelligence, and disinterestedness of the long list of gentlemen at whose instance this meeting was assembled. The meeting, Sir, was connected with no party purpose whatever. It had an object more sober, more cogent, more interesting to the whole community, than mere party questions. The Senate will perceive in the tone of these resolutions no intent to exaggerate or inflame; no disposition to get up excitement or to spread alarm. I hope the restrained and serious manner, the moderation of temper, and the exemplary candor of these resolutions, in connection with the plain truths which they contain, will give them just weight with the Senate. I assure you, Sir, the members composing this meeting were neither capitalists, nor speculators, nor alarmists. They are merchants, traders, mechanics, artisans, and others engaged in the active business of life. They are of the muscular portion of society; and they desire to lay before Congress an evil which they feel to press sorely on their occupations, their earnings, their labor, and their property; and to express their conscientious conviction of the causes of that evil. If intelligence, if pure intention, if deep and wide-spread connection with business in its various branches, if thorough practical knowledge and experience, if inseparable union between their own prosperity and the prosperity of the whole country, authorize men to speak, and give them a right to be heard, the sentiments of this meeting ought to make an impression. For one, Sir, I entirely concur in all their opinions. I adopt their first fourteen resolutions, without alteration or qualifica-

tion, as setting forth truly the present state of things, stating truly its causes, and pointing to the true remedy.

Mr. President, now that I am speaking, I will use the opportunity to say a few words which I intended to say in the course of the morning, on the coming up of the resolution which now lies on the table; but which are as applicable to this occasion as to that. An opportunity may perhaps hereafter be afforded me of discussing the reasons given by the Secretary for the very important measure adopted by him in removing the deposits. But as I know not how near that time may be, I desire, in the mean while, to make my opinions known without reserve on the present state of the country. Without intending to discuss any thing at present, I feel it my duty, nevertheless, to let my sentiments and my convictions be understood.

In the first place, then, Sir, I agree with those who think that there is a severe pressure in the money market, and very serious embarrassment felt in all branches of the national industry. I think this is not local, but general; general, at least, over every part of the country where the cause has yet begun to operate, and sure to become not only general, but universal, as the operation of the cause shall spread. If evidence be wanted, in addition to all that is told us by those who know, the high rate of interest, now at twelve per cent. or higher where it was hardly six last September, the depression of all stocks, some ten, some twenty, some thirty per cent., and the low prices of commodities, are proofs abundantly sufficient to show the existence of the pressure. But, Sir, labor, that most extensive of all interests, American manual labor, feels, or will feel, the shock more sensibly, far more sensibly, than capital, or property of any kind. Public works have stopped, or must stop; great private undertakings, employing many hands, have ceased, and others must cease. A great lowering of the rates of wages, as well as a depreciation of property, is the inevitable consequence of causes now in full operation. Serious embarrassments in all branches of business do certainly exist.

I am of opinion, therefore, that there is undoubtedly a very severe pressure on the community, which Congress ought to relieve, if it can; and that this pressure is not an instance of the ordinary reaction, or the ebbing and flowing, of commercial affairs, but is an extraordinary case, produced by an extraordinary cause.

In the next place, Sir, I agree entirely with the eleventh Boston resolution, as to the causes of this embarrassment. We were in a state of high prosperity, commercial and agricultural. Every branch of business was pushed far, and the credit as well as the capital of the country employed nearly to its utmost limits. In this state of affairs, some degree of over-trading doubtless took place, which, however, if nothing else had occurred, would have been seasonably corrected by the ordinary and necessary operation of things. But on this palmy state of business the late measure of the Secretary fell, and has acted on it with powerful and lamentable effect. I am of opinion, that such a cause is entirely adequate to produce the effect, that it is wholly natural, and that it ought to have been foreseen that it would produce exactly such consequences. Those must have looked at the surface of things only, as it seems to me, who thought otherwise, and who expected that such an operation could be gone through with without producing a very serious shock.

The treasury in a very short time has withdrawn from the bank eight millions of dollars, within a fraction. This call, of course, the bank has been obliged to provide for, and could not provide for without more or less inconvenience to the public. The mere withdrawal of so large a sum from hands actually holding and using it, and the transfer of it, through the bank collecting, and through another bank loaning it, if it can loan it, into other hands, is itself an operation which, if conducted suddenly, must produce considerable inconvenience. And this is all that the Secretary seems to have anticipated. But this is but the smallest part of the whole evil. The great evil arises from the new attitude in which the government places itself towards the bank. Every thing is now in a false position. The government, the Bank of the United States, and the State banks, are all out of place. They are deranged, and separated, and jostling against each other. Instead of amity, reliance, and mutual succor, relations of jealousy, of distrust, of hostility even, are springing up between these parties. All act on the defensive; each looks out for itself; and the public interest is crushed between the upper and the nether millstone. All this should have been foreseen. It is idle to say that these evils might have been prevented by the bank, if it had exerted itself to prevent them. That is a mere matter of opinion: it may be true, or it

may not; but it was the business of those who proposed the removal of the deposits to ask themselves how it was probable the bank would act when they should attack it, assail its credit, and allege the violation by it of its charter; and thus compel it to take an attitude, at least, of stern defence. The community have certainly a right to hold those answerable who have unnecessarily got into this quarrel with the bank, and thereby occasioned the evil, let the conduct of the bank, in the course of the controversy, be what it may.

In my opinion, Sir, the great source of the evil is the shock which the measure has given to *confidence* in the commercial world. The credit of the whole system of the currency of the country seems shaken. The State banks have lost credit and lost confidence. They have suffered vastly more than the Bank of the United States itself, at which the blow was aimed.

The derangement of internal exchanges is one of the most disastrous consequences of the measure. By the origin of its charter, by its unquestioned solidity, by the fact that it was *at home everywhere* and in perfect credit everywhere, the Bank of the United States accomplished the internal exchanges of the country with vast facility, and at a rate of unprecedented cheapness. The State banks can never perform this equally well; for the reason given in the Boston resolutions, they cannot act with the same concert, the same identity of purpose. Look at the prices current, and see the change in the value of the notes of distant banks in the great cities. Look at the depression of the stocks of the State banks, deposit banks, and all. Look at what must happen the moment the Bank of the United States, in its process of winding up, or to meet any other crisis, shall cease to buy domestic bills, especially in the Southern, Southwestern, and Western markets. Can any man doubt what will be the state of exchange when that takes place? Or can any one doubt its necessary effect upon the price of produce? The bank has purchased bills to the amount of sixty millions a year, as appears by documents heretofore laid before the Senate. A great portion of these, no doubt, were purchased in the South and West, against shipments of the great staples of those quarters of the country. Such is the course of trade. The produce of the Southwest and the South is shipped to the North and East for sale, and those who ship it draw bills on

those to whom it is shipped; and these bills are bought and discounted, or cashed by the bank. When the bank shall cease to buy, as it must cease, consequences cannot but be felt much severer even than those now experienced. This is inevitable. But, Sir, I go no farther into particular statements. My opinion, I repeat, is, that the present distress is immediately occasioned, beyond all doubt, by the removal of the deposits; and that just such consequences might have been, and ought to have been, foreseen from that measure, as we do now perceive and feel around us.

Sir, I do not believe, nevertheless, that these consequences were foreseen. With such foresight, the deposits, I think, would not have been touched. The measure has operated more deeply and more widely than was expected. We all may find proof of this in the conversations of every hour. No one, who seeks to acquaint himself with the opinions of men, in and out of Congress, can doubt, that, if the act were now proposed, it would receive very little encouragement or support.

Being of opinion that the removal of the deposits has produced the pressure as its immediate effect, not so much by withdrawing a large sum of money from circulation, as by alarming the confidence of the community, by breaking in on the well-adjusted relations of the government and the bank, I agree again with the Boston resolutions, that the natural remedy is a restoration of the relation in which the bank has heretofore stood to the government. I agree, Sir, that this question ought to be settled, and to be settled soon. And yet, if it be decided that the present state of things shall exist, if it be the determination of Congress to do nothing in order to put an end to the unnatural, distrustful, half-belligerent relation between the government and the bank, I do not look for any great relief to the community, or any early quieting of the public agitation. On the contrary, I expect increased difficulty and increased disquiet.

The public moneys are now out of the Bank of the United States. There is no law regulating their custody or fixing their place. They are at the disposal of the Secretary of the Treasury, to be kept where he pleases, as he pleases, and the places of their custody to be changed as often as he pleases.

I do not think that this is a state of things in which the country is likely to acquiesce.

Mr. President, the restoration of the deposits is a question distinct and by itself. It does not necessarily involve any other question. It stands clear of all controversy and all opinion about rechartering the bank, or creating any new bank. I wish, nevertheless, Sir, to say a few words with a bearing somewhat beyond that question. Being of opinion that the country is not likely to be satisfied with the present state of things, I have looked earnestly for the suggestion of some prospective measure, some system to be adopted as the future policy of the country. Where are the public moneys hereafter to be kept? In what currency is the revenue hereafter to be collected? What is to take the place of the bank in our general system? How are we to preserve a uniform currency, a uniform measure of the value of property and the value of labor, a uniform medium of exchange and of payments? How are we to exercise that salutary control over the national currency which it was the unquestionable purpose of the Constitution to devolve on Congress? These, Sir, appear to me to be the momentous questions before us, and which we cannot long keep out of view. In these questions, every man in the community who either has a dollar, or expects to earn one, has a direct interest.

Now, Sir, I have heard but four suggestions, or opinions, as to what may hereafter be expected or attempted.

The first is, that things will remain as they are, that the bank will be suffered to expire, that no new bank will be created, and the whole subject be left under the control of the executive department.

I have already said, that I do not believe the country will ever acquiesce in this.

The second suggestion is that which was made by the honorable member from Virginia.* That honorable member pledges himself to bring forward a proposition, having for its object to do away with the paper system altogether, and to return to an exclusively metallic currency. I do not think, Sir, that he will find much support in such an undertaking. A mere gold and silver currency, and the entire abolition of paper, are not suited to the times. The idea has something a little too antique, too Spartan, in it; we might as well think of going back to iron at once. If such a result as the gentleman hopes for were even desira-

* Mr. Rives.

ble, I regard its attainment as utterly impracticable and hopeless. I lay that scheme, therefore, out of my contemplation.

There is, then, Sir, the rechartering of the present bank; and, lastly, there is the establishment of a new bank. The first of these received the sanction of the last Congress, but the measure was negatived by the President. The other, the creation of a new bank, has not been brought forward in Congress, but it has excited attention out of doors, and has been proposed in some of the State legislatures. I observe, Sir, that a proposition has been submitted for consideration, by a very intelligent gentleman in the legislature of Massachusetts, recommending the establishment of a new bank, with the following provisions: —

"1. The capital stock to be fifty millions of dollars.

"2. The stockholders of the present United States Bank to be permitted to subscribe an amount equal to the stock they now hold.

"3. The United States to be stockholders to the same extent they now are, and to appoint the same number of directors.

"4. The subscription to the remaining fifteen millions to be distributed to the several States in proportion to federal numbers, or in some other just and equal ratio; the instalments payable either in cash or in funded stock of the State, bearing interest at five per cent.

"5. No branch of the bank to be established in any State, unless by permission of its legislature.

"6. The branches of the bank established in the several States to be liable to taxation by those States, respectively, in the same manner and to the same extent only with their own banks.

"7. Such States as may become subscribers to the stock to have the right of appointing a certain number, not exceeding one third, of the directors in the branch of their own State.

"8. Stock not subscribed for under the foregoing provisions to be open to subscription by individual citizens."

A project not altogether dissimilar has been started in the legislature of Pennsylvania. These proceedings show, at least, a conviction of the necessity of some bank created by Congress. Mr. President, on this subject I have no doubt whatever. I think a national bank proper and necessary. I believe it to be the only practicable remedy for the evils we feel, and the only effectual security against the greater evils which we fear. Not, Sir, that there is any magic in the name of a bank; nor that a national bank works by any miracle or mystery. But, looking

to the state of things actually existing around us, looking to the great number of State banks already created, not less than three hundred and fifty or four hundred, looking to the vast amount of paper issued by those banks, and considering that, in the very nature of things, this paper must be limited and local in its credit and in its circulation, I confess I see nothing but a well-conducted national institution which is likely to afford any guard against excessive paper issues, or which can furnish a sound and uniform currency to every part of the United States. This, Sir, is not only a question of finance, it not only respects the operations of the treasury, but it rises to the character of a high political question. It respects the currency, the actual money, the measure of value of all property and all labor in the United States. If we needed not a dollar of money in the treasury, it would still be our solemn and bounden duty to protect this great interest. It respects the exercise of one of the greatest powers, beyond all doubt, conferred on Congress by the Constitution. And I hardly know any thing less consistent with our public duty and our high trust, nor any thing more likely to disturb the harmonious relations of the States, in all affairs of business and life, than for Congress to abandon all care and control over the currency, and to throw the whole money system of the country into the hands of four-and-twenty State legislatures.

I am, then, Sir, for a bank; and am fully persuaded that to that measure the country must come at last.

The question, then, is between the creation of a new bank, and the rechartering of the present bank, with modifications. I have already referred to the scheme for a new bank, proposed to the legislature of Massachusetts by Mr. White. Between such a new bank as his propositions would create, and a rechartering of the present bank, with modifications, there is no very wide, certainly no irreconcilable difference. We cannot, however, create another bank before March, 1836. This is one reason for preferring a continuance of the present. And, treating the subject as a practical question, and looking to the state of opinion, and to the probability of success in either attempt, I incline to the opinion that the true course of policy is to propose a recharter of the present bank, *with modifications.*

As to what these modifications should be, I would only now

observe, that, while it may well be inferred, from my known sentiments, that I should not myself deem any alterations in the charter beyond those proposed by the bill of 1832 highly essential, yet it is a case in which, I am aware, nothing can be effected for the good of the country without making some approaches to unity of opinion. I think, therefore, that, in the hope of accomplishing an object of so much importance, liberal concessions should be made. I lay out of the case all consideration of any especial claim, or any legal right, of the present stockholders to a renewal of their charter. No such right can be pretended; doubtless none such is pretended. The stockholders must stand like other individuals, and their interest must be regarded so far, and so far only, as may be judged for the public good. Modifications of the present charter should, I think, be proposed, such as may remove all reasonable grounds of jealousy in all quarters, whether in States, in other institutions, or in individuals; such, too, as may tend to reconcile the interests of the great city where the bank is with those of another great city; and, in short, the question should be met with a sincere disposition to accomplish, by united and friendly counsels, a measure which shall allay fears and promote confidence, at the same time that it secures to the country a sound, creditable, uniform currency, and to the government a safe deposit for the public treasure, and an important auxiliary in its financial operations.

I repeat, then, Sir, that I am in favor of renewing the charter of the present bank, *with such alterations as may be expected to meet the general sense of the country.*

And now, Mr. President, to avoid all unfounded inferences, I wish to say, that these suggestions are to be regarded as wholly my own. They are made without the knowledge of the bank, and with no understanding or concert with any of its friends. I have not understood, indeed, that the bank itself proposes to apply, at present, for a renewal of its charter. Whether it does so or not, my suggestions are connected with no such purpose of the bank, nor with any other purpose which it may be supposed to entertain. I take up the subject on public grounds, purely and exclusively.

And, Sir, in order to repel all inferences of another sort, I wish to state, with equal distinctness, that I do not undertake to speak the sentiments of any individual heretofore opposed to the bank,

or belonging to that class of public men who have generally opposed it. I state my own opinions; if others should concur in them, it will be only because they approve them, and will not be the result of any previous concert or understanding whatever.

Finally, Mr. President, having stated my own opinions, I respectfully ask those who propose to continue the discussion now going on, relative to the deposits, to let the country see their plan for the final settlement of the present difficulties. If they are against the bank, and against all banks, *what do they propose?* That the country will not be satisfied with the present state of things, seems to be certain. *What state of things is to succeed it?* To these questions I desire earnestly to call the attention of the Senate and of the country. The occasion is critical, the interests at stake momentous, and, in my judgment, Congress ought not to adjourn till it shall have passed some law suitable to the exigency, and satisfactory to the country.

On the 30th day of January, Mr. Wright, of New York, presented to the Senate sundry resolutions, passed by the legislature of New York, approving the removal of the deposits, and disapproving of any Bank of the United States.

In presenting these resolutions, Mr. Wright, among other observations, expressed his decided hostility to the renewal of the charter of the present bank, or the creation of any other. He said that he would oppose this bank upon the ground of its flagrant violations of the high trusts confided to it, but that his objections were of a still deeper and graver character; that he went against this bank, and against any and every bank to be incorporated by Congress, to be located anywhere within the twenty-four States. He expressed a strong opinion, too, that the existing distress arose from the conduct of the bank in curtailing its loans; and that this curtailment had been made with a view to extort a renewal of its charter from the fears of the people.

As *to what was to be done*, under present circumstances, in order to relieve the public pressure, Mr. Wright said, that, speaking for himself only, he would sustain the executive branch of the government, by all the legal means in his power, in the effort now making to substitute the State banks, instead of the Bank of the United States, as the fiscal agent of the government.

When Mr. Wright had concluded his remarks, Mr. Webster said: —

I cannot consent to let the opportunity pass, without a few observations upon what we have now heard. Sir, the remarks of the honorable member from New York are full of the most portentous import. They are words, not of cheering or consolation, but of ill-boding signification; and, as they spread far and wide, in their progress from the capital through the country, they will carry with them, if I mistake not, gloom, apprehension, and dismay. I consider the declarations which the honorable member has now made, as expressing the settled purpose of the administration on the great question which so much agitates the country.

Here Mr. Wright rose, and said that he had given his opinion as an individual, and that he had no authority to speak for the administration. Mr. Webster continued: —

I perfectly well understand, Sir, all the gentleman's disclaimers and demurrers. He speaks, to be sure, in his own name only; but, from his political connections, his station, and his relations, I know full well that he has not, on this occasion, spoken one word which has not been deliberately weighed and considered by others as well as himself.

He has announced, therefore, to the country, two things clearly and intelligibly: —

First, that the present system (if system it is to be called) is to remain unaltered. The public moneys are to remain, as they now are, in the State banks, and the whole public revenue is hereafter to be collected through the agency of such banks. This is the first point. The gentleman has declared his full and fixed intention to support the administration in this course, and therefore it cannot be doubted that this course has been determined on by the administration. No plan is to be laid before Congress; no system is to be adopted by authority of law. The effect of a law would be to place the public deposits beyond the power of daily change, and beyond the absolute control of the executive. But no such fixed arrangement is to take place. The whole is to be left completely at the pleasure of the Secretary of the Treasury, who may change the public moneys from place to place, and from bank to bank, as often as he pleases.

The second thing now clearly made known, and of which, indeed, there have been many previous intimations, is, Sir, that a

great effort is to be made, or rather an effort already made is to be vigorously renewed and continued, to turn the public complaints against the bank instead of the government, and to persuade the people that all their sufferings arise, not from the act of the administration in removing the public deposits, but from the conduct of the bank since that was done. It is to be asserted here, and will be the topic of declamation everywhere, that, notwithstanding the removal of the deposits, if the bank had not acted wrong, there would have been no pressure or distress on the country. The object, it is evident, will now be to divert public attention from the conduct of the Secretary, and fix it on that of the bank. This is the second thing which is to be learned from the speech of the member from New York.

The honorable member has said that new honors are to be gained by the President, from the act which he is about to accomplish; that he is to bring back legislation to its original limits, and to establish the great truth, that Congress has no power to create a national bank. I shall not stop to argue whether Congress can charter a bank in this little District, which shall operate everywhere throughout the Union, and yet cannot establish one in any of the States. The gentleman seemed to leave that point, as if Congress had such a power. But all must see that, if Congress cannot establish a bank in one of the States, with branches in the rest, it would be mere evasion to say that it might establish a bank here, with branches in the several States.

Congress, it is alleged, has not the constitutional power to create a bank. Sir, on what does this power rest, in the opinion of those of us who maintain it? Simply on this; that it is a power which is necessary and proper for the purpose of carrying other powers into effect. A fiscal agent, an auxiliary to the treasury, a machine, a something, is necessary for the purposes of the government; and Congress, under the general authority conferred upon it, can create that fiscal agent, that machine, that something, and call it a bank. This is what I contend for; but this the gentleman denies, and says that it is not competent to Congress to create a fiscal agent for itself, but that it may employ as such agents institutions not created by itself, but by others, and which are beyond the control of Congress. It is admitted that the agent is necessary, and that Congress has the power to employ it; but it is insisted, nevertheless, that Con-

gress cannot create it, but must take such as is or may be already created. I do not agree to the soundness of this reasoning. Suppose there were no State banks; as the gentleman admits the necessity of a bank in that case, now can he hold such discordant opinions as to assert that Congress could not, in that case, create one? The agency of a bank is necessary; and, because it is necessary, we may use it, provided others will make a bank for us; but if they will not, we cannot make one for ourselves, however necessary! This is the proposition.

For myself, I must confess that I am too obtuse to see the distinction between the power of creating a bank for the use of the government, and the power of taking into its use banks already created. To make and to use, or to make and to hire, must require the same power in this case, and be either both constitutional or both equally unconstitutional; except that every consideration of propriety and expediency and convenience requires that Congress should make a bank which will suit its own purposes, answer its own ends, and be subject to its own control, rather than use other banks, which were not created for any such purpose, are not suited to it, and over which Congress can exercise no supervision.

On one or two other points, Sir, I wish to say a word. The gentleman differs from me as to the degree of pressure on the country. He admits that, in some parts, there is some degree of pressure; in large cities, he supposes there may be distress; but he asserts that everywhere else the pressure is limited; that everywhere it is greatly exaggerated; and that it will soon be over. This is mere matter of opinion. It is capable of no precise and absolute proof or disproof. The avenues of knowledge are equally open to all. But I can truly say, that I differ from the gentleman on this point most materially and most widely. From the information I have received during the last few weeks, I have every reason to believe that the pressure is very severe, has become very general, and is fast increasing; and I see no chance of its diminution, unless measures of relief shall be adopted by the government.

But the gentleman has discovered, or thinks he has discovered, motives for the complaints which arise on all sides. It is all but an attempt to bring the administration into disfavor. This alone is the reason why the removal of the deposits is so

strongly censured! Sir, the gentleman is mistaken. He does not, at least I think he does not, rightly interpret the signs of the times. The cause of complaint is much deeper and stronger than any mere desire to produce political effect. The gentleman must be aware, that, notwithstanding the great vote by which the New York resolutions were carried, and the support given by other proceedings to the removal of the deposits, there are many as ardent friends of the President as are to be found anywhere who exceedingly regret and deplore the measure. Sir, on this floor there has been going on for many weeks as interesting a debate as has been witnessed for twenty years; and yet I have not heard, among all who have supported the administration, a single Senator say that he approved the removal of the deposits, or was glad it had taken place, until the gentleman from New York spoke. I saw the gentleman from Georgia approach that point; but he shunned direct contact. He complained much of the bank; he insisted, too, on the power of removal; but I did not hear him say he thought it a wise act. The gentleman from Virginia, not now in his seat, also defended the power, and has arraigned the bank; but has he said that he approved the measure of removal? I have not met with twenty individuals, in or out of Congress, who have expressed an approval of it, among the many hundreds whose opinions I have heard, — not twenty who have maintained that it was a wise proceeding; but I have heard individuals of ample fortune, although they wholly disapproved the measure, declare, nevertheless, that, since it was adopted, they would sacrifice all they possessed rather than not support it. Such is the warmth of party zeal.

Sir, it is a mistake to suppose that the present agitation of the country springs from mere party motives. It is a great mistake. Every body is not a politician. The mind of every man in the country is not occupied with the project of subverting one administration, and setting up another. The gentleman has done great injustice to the people. I know, Sir, that great injustice has been done to the memorialists from Boston, whose resolutions I presented some days since, some of whom are very ardent friends of the President, and can have been influenced by no such motive as has been attributed to them.

But, Mr President, I think I heard yesterday something from

the gentleman from Pennsylvania indicative of an intention to direct the hostility of the country against the bank, and to ascribe to the bank alone the existing public distress. But it was the duty of the government to have foreseen the consequences of the removal of the deposits; and gentlemen have no right first to attack the bank, charge it with great offences, and thus attempt to shake its credit, and then complain when the bank undertakes to defend itself, and to avoid the great risk which must threaten it from the hostility of the government to its property and character. The government has placed itself in an extraordinary relation, not only toward the banks, but toward the business and currency of the country, by the removal of the deposits. The bills of the bank are lawful currency in all payments to government; yet we see the executive warring on the credit of this national currency. We have seen the institution assailed, which, by law, was provided to supply the revenue. Is not this a new course? Does the recollection of the gentleman furnish any such instance? What other institution could stand against such hostility? The Bank of England could not stand against it a single hour. The Bank of France would perish at the first breath of such hostility. But the Bank of the United States has sustained its credit under every disadvantage, and has ample means to sustain it to the end. Its credit is in no degree shaken, though its operations are necessarily curtailed. What has the bank done? The gentleman from New York and the gentleman from Pennsylvania have alleged that it is not because of the removal of the deposits that there is pressure in the country, but because of the conduct of the bank. The latter gentleman, especially, alleges that the bank began to curtail its discounts before the removal of the deposits, and at a time when it was only *expected* that they would be removed. Indeed! and did not the bank, by taking this course, prove that it foresaw correctly what was to take place? and because it adopted a course of preparation, in order to break the blow which was about to fall upon it, this also is to be added to the grave catalogue of its offences. The bank, it seems, has curtailed to the amount of nine millions. Has she, indeed? And is not that exactly the amount of deposits which the government has withdrawn? The bank, then, has curtailed precisely so much as the government has drawn away from it. No other bank in the

world could have gone on with so small a curtailment. While public confidence was diminishing all around the bank, it only curtailed just as much as it lost by the act of the government. The bank would be justified, even without the withdrawal of the deposits, in curtailing its discounts gradually, and continuing to do so to the end of its charter, considering the hostility manifested to its further continuance. The government has refused to recharter it. Its term of existence is approaching: one of the duties which it has to perform is to make its collections; and the process of collection, since it must be slow, ought to be commenced in season. It is, therefore, its duty to begin its curtailments, so that the process may be gradual.

I hope that I have not been misunderstood in my remarks the other morning. The gentleman from New York has represented me as saying, that it is not the removal of the deposits which has caused the public distress. What I said was, that if the government had required twice nine millions for its service, the withdrawal of that amount from the bank, without any interruption of the good understanding between the government and the bank, would not have caused this pressure and distrust. Every thing turns on the circumstances under which the withdrawal is made. If public confidence is not shaken, all is well; but if it is, all, all is difficulty and distress. And this confidence is shaken.

It has been said by the gentleman from New York, that government has no design against the bank; that it only desires to withdraw the public deposits. Yet, in the very paper submitted to Congress by the executive department, the bank is arraigned as unconstitutional in its very origin, and also as having broken its charter and violated its obligations, and its very existence is said to be dangerous to the country. Is not all this calculated to injure the character of the bank, and to shake confidence? The bank has its foreign connections, and is much engaged in the business of foreign exchanges; and what will be thought at Paris and London, when the community there shall see all these charges made by the government against a bank in which they have always reposed the highest trust? Does not this injure its reputation? Does it not compel it to take a defensive attitude? The gentleman from New York spoke of the power in the country to put down the bank, and of doing as our

fathers did in the time of the Revolution, and has called on the people to rise and put down this money power, as our ancestors put down the oppressive rule of Great Britain! All this is well calculated to produce the effect which is intended; and all this, too, helps further to shake confidence. It all injures the bank, it all compels it to curtail more and more.

Sir, I venture to predict that the longer gentlemen pursue the experiment which they have devised, of collecting the public revenue by State banks, the more perfectly will they be satisfied that it cannot succeed. The gentleman has suffered himself to be led away by false analogies. He says, that when the present bank expires, there will be the same laws in existence as when the old bank expired. Now, would it not be the inference of every wise man, that there will also be the same inconveniences as were then felt? It would be useful to remember the state of things which existed when the first bank was created, in 1791; and that a high degree of convenience, which amounted to political necessity, compelled Congress thus early to create a national bank. Its charter expired in 1811, and the war came on the next year. The State banks immediately stopped payment; and, before the war had continued twelve months, there was a proposition for another United States Bank; and this proposal was renewed from year to year, and from session to session. Who supported this proposition? The very individuals who had opposed the former bank, and who had now become convinced of the indispensable necessity of such an institution. It has been verified by experience, that the bank is as necessary in time of peace as in time of war; and perhaps more necessary, for the purpose of facilitating the commercial operations of the country, collecting the revenue, and sustaining the currency. It has been alleged, that we are to be left in the same condition as when the old bank expired, and, of course, we are to be subjected to the same inconveniences. Sir, why should we thus suffer all experience to be lost upon us? For the convenience of the government and of the country, there must be some bank, at least I think so; and I should wish to hear the views of the administration as to this point.

The notes and bills of the Bank of the United States have heretofore been circulated everywhere; they meet the wants of every one; they have furnished a safe and most convenient cur-

rency. It is impossible for Congress by enactment to confer a certain value on the paper of the State banks. They may say that these banks are entitled to credit; but they cannot legislate them into the good opinion and faith of the public. Credit is a thing which must take its own course. It can never happen that the New York notes will be at par value in Louisiana, or that the notes of the Louisiana banks will be at par value in New York. In the notes of the United States Bank we have a currency of equal value everywhere; and I say that there is not to be found, in the whole world, another institution whose notes spread so far and wide, with perfect credit in all places. There is no instance of a bank whose paper is spread over so vast a surface of country, and is everywhere of such equal value. How can it be, that a number of State banks, scattered over two thousand miles of country, subject to twenty-four different State legislatures and State tribunals, without the possibility of any general concert of action, can supply the place of one general bank? It cannot be. I see, Sir, in the doctrines which have been advanced to-day, only new distress and disaster, new insecurity, and more danger to property than the country has experienced for many years; because it is in vain to attempt to uphold the occupations of industry, unless property is made secure; or the value of labor, unless its recompense is safe. But an opportunity will occur for resuming this subject hereafter. I forbear to dwell upon it at present.

A word or two on one other point. It was said by me, on a former day, that this immediate question of the deposits does not necessarily draw after it the question of rechartering the Bank of the United States. It leaves that question for future adjustment. But the present question involves high political considerations, which I am not now about to discuss. If the question of the removal of the deposits be not now taken into view, gentlemen will be bound to vote on the resolutions of the Senator from Kentucky,* as to the power which has been claimed and exercised. The question, then, is not as to the renewing of the charter of the bank. But I repeat, that, however gentlemen may flatter themselves, if it be not settled that the deposits are to be restored, nothing will be settled; negative resolutions will

* Mr. Clay.

not tranquillize the country and give it repose. The question is before the country; all agree that it must be settled by that country. I very much regret that topics are mixed up with the question which may prevent it from being submitted to the calm judgment of the people. Yet I have not lost faith in public sentiment. Events are occurring daily, which will make the people think for themselves. The industrious, the enterprising, will see the danger which surrounds them, and will awake. If the majority of the people shall then say there is no necessity for a continuance of this sound and universal currency, I will acquiesce in their judgment, because I can do no otherwise than acquiesce. If the gentleman from New York is right in his reading of the prognostics, and public opinion shall settle down in the way which he desires; and if it be determined here that the public money is to be placed at the disposal of the executive, with absolute power over the whole subject of its custody and guardianship, and that the general currency is to be left to the control of banks created by twenty-four States; — then I say, that, in my judgment, one strong bond of our social and political Union is severed, and one great pillar of our prosperity is broken and prostrate.

Mr. Tallmadge of New York spoke in reply to Mr. Webster, and denied the constitutional power of Congress to create a bank, although he maintained the power of the Secretary to make use of the State banks.

The subject being resumed the next day, January 31, Mr. Webster said: —

It is not to be denied, Sir, that the financial affairs of the country have come, at last, to such a state, that every man can see plainly the question which is presented for the decision of Congress. We have, unquestionably, before us, now, the views of the executive, as to the nature and extent of the evils alleged to exist; and its notions, also, as to the proper remedy for such evils. That remedy is short. It is, simply, the system of administration already adopted by the Secretary of the Treasury, and which is nothing but this, that, whenever he shall think proper to remove the public moneys from the Bank of the United States, and place them wherever else he pleases, this act shall stand as the settled policy and system of the country; and this system shall rest upon the authority of the executive alone.

This is now to be our future policy, as I understand the grave, significant import of the remarks made yesterday by the gentleman from New York, and as I perceive they are generally understood, and as they are evidently understood by the gentleman from Mississippi,* who has alluded to them on presenting his resolutions this morning. I wish, Sir, to take this, the earliest opportunity, of stating my opinions upon this subject; and that opinion is, that the remedy proposed by the administration for the evils under which the country is at this time suffering cannot bring relief, will not give satisfaction, and cannot be acquiesced in. I think the country, on the other hand, will show much dissatisfaction; and that from no motive of hostility to the government, from no disposition to make the currency of the country turn upon political events, or to make political events turn upon the question of the currency; but simply because, in my judgment, the system is radically defective, totally insufficient, carrying with it little confidence of the public, and none at all beyond what it acquires merely by the influence of the name which recommends it.

I do not intend now, Mr. President, to go into a regular and formal argument to prove the constitutional power of Congress to establish a national bank. That question has been argued a hundred times, and always settled the same way. The whole history of the country, for almost forty years, proves that such a power has been believed to exist. All previous Congresses, or nearly all, have admitted or sanctioned it; the judicial tribunals, federal and State, have sanctioned it. The Supreme Court of the United States has declared the constitutionality of the present bank, after the most solemn argument, without a dissenting voice on the bench. Every successive President has, tacitly or expressly, admitted the power. The present President has done this; he has informed Congress that he could furnish the plan of a bank which should conform to the Constitution. In objecting to the recharter of the present bank, he objected for particular reasons; and he has said that a Bank of the United States would be useful and convenient for the people.

All this authority, I think, ought to settle the question. Both the members from New York, however, are still unsatisfied

* Mr. Poindexter.

they both deny the power of Congress to establish a bank. Now, Sir, I shall not argue the question at this time; but I will repeat what I said yesterday. It does appear to me, that the late measures of the administration prove incontestably, and by a very short course of reasoning, the constitutionality of the bank. What I said yesterday, and what I say to-day, is, that, since the Secretary, and all who agree with the Secretary, admit the necessity of the agency of *some* bank to carry on the affairs of government, I am at a loss to see where they could find power to use a State bank, and yet find no power to create a Bank of the United States. The gentleman's perception may be sharp enough to see a distinction between these two cases; but it is too minute for my grasp. It is not said, in terms, in the Constitution, that Congress may create a bank; nor is it said, in terms, that Congress may use a bank created by a State. How, then, does it get authority to do either? No otherwise, certainly, than as it possesses power to pass all laws necessary and proper for carrying its enumerated powers into effect. If a law were now before us for confirming the arrangement of the Secretary, and adopting twenty State banks into the service of the United States, as fiscal agents of the government, where would the honorable gentleman find authority for passing such a law? Nowhere but in that clause of the Constitution to which I have referred; that is to say, the clause which authorizes Congress to pass all laws necessary and proper for carrying its granted powers into effect. If such a law were before us, and the honorable member proposed to vote for it, he would be obliged to prove that the agency of a bank is a thing both necessary and proper for carrying on the government. If he could not make this out, the law would be unconstitutional. We see the Secretary admits the necessity of this bank agency; the gentleman himself admits it, nay, contends for it. A bank agency is his main reliance. All the hopes expressed by himself or his colleague, of being able to get on with the present state of things, rest on the expected efficiency of a bank agency.

A bank, then, or some bank, being admitted to be both necessary and proper for carrying on the government, and the Secretary proposing, on that very ground, and no other, to employ the State banks, how does he make out a distinction between passing a law for using a necessary agent, already created,

and a law for creating a similar agent, to be used, when created, for the same purpose? If there be any distinction, as it seems to me, it is rather in favor of creating a bank, by the authority of Congress, with such powers, and no others, as the service expected from it requires, answerable to Congress, and always under the control of Congress, than of employing as our agents banks created by other governments, for other purposes, and over which this government has no control.

But, Sir, whichever power is exercised, both spring from the same source; and the power to establish a bank, on the ground that its agency is necessary and proper for the ends and uses of government, is at least as plainly constitutional as the power to adopt banks, for the same uses and objects, which are already made by other governments. Inded, the legal act is, in both cases, the same. When Congress makes a bank, it creates an agency; when it adopts a State bank, it creates an agency. If there be power for one, therefore, there is power for the other. No power to create a corporation is expressly given to Congress; nor is Congress anywhere forbidden to create a corporation. The creation of a corporation is an act of law, and when it passes, the only question is, whether it be a necessary and proper law for carrying on the government advantageously. The case will be precisely the same when we shall be asked to pass a law for confirming the Secretary's arrangement with State banks. Each is constitutional, if Congress may fairly regard it as a necessary measure.

The honorable member, Sir, quoted me as having said that I regarded the bank as one of the greatest bonds of the union of the States. That is not exactly what I said. What I did say was, that the constitutional power vested in Congress over the legal currency of the country was one of its very highest powers, and that the exercise of this high power was one of the strongest bonds of the union of the States. And this I say still. Sir, the gentleman did not go to the Constitution. He did not tell us how he understands it, or how he proposes to execute the great trust which it devolves on Congress in respect to the circulating medium. I can only say, Sir, how I understand it.

The Constitution declares that Congress shall have power "to coin money, *regulate the value thereof*, and of foreign coin." And it also declares that "no State shall coin money, emit bills

of credit, or make any thing but gold and silver coin a tender in payment of debts." Congress, then, and Congress only, can coin money, and *regulate the value thereof.* Now, Sir, I take it to be a truth, which has grown into an admitted maxim with all the best writers and the best informed public men, that those whose duty it is to protect the community against the evils of a debased coin, are bound also to protect it against the still greater evils of excessive issues of paper.

If the public require protection, says Mr. Ricardo, against bad money, which might be imposed on them by an undue mixture of alloy, how much more necessary is such protection when paper money forms almost the whole of the circulating medium of the country!

It is not to be doubted, Sir, that the Constitution intended that Congress should exercise a regulating power, a power both necessary and salutary, over that which should constitute the actual money of the country, whether that money were coin or the representative of coin. So it has always been considered: so Mr. Madison considered it, as may be seen in his message of the 3d of December, 1816. He there says: —

"Upon this general view of the subject, it is obvious that there is only wanting to the fiscal prosperity of the government the restoration of a uniform medium of exchange. The resources and the faith of the nation, displayed in the system which Congress has established, insure respect and confidence both at home and abroad. The local accumulations of the revenue have already enabled the treasury to meet the public engagements in the local currency of most of the States; and it is expected that the same cause will produce the same effect throughout the Union. But for the interests of the community at large, as well as for the purposes of the treasury, it is essential that the nation should possess a currency of equal value, credit, and use, wherever it may circulate. The Constitution has intrusted Congress exclusively with the power of creating and regulating a currency of that description; and the measures which were taken during the last session, in execution of the power, give every promise of success. The Bank of the United States has been organized under auspices the most favorable, and cannot fail to be an important auxiliary to those measures."

The State banks put forth paper as representing coin. As such representative, it obtains circulation; it becomes the money of the country; but its amount depends on the will of four hun-

dred different State banks, each acting on its own discretion; and in the absence of every thing preventive or corrective on the part of the United States, what security is there against excessive issues of paper, and consequent depreciation? The public feels that there is no security against these evils; it has learned this from experience; and this very feeling, this distrust of the paper of State banks, is the very evil which they themselves have to encounter; and it is a most serious evil. They know that confidence in them is far greater when there exists a power elsewhere to prevent excess and depreciation. Such a power, therefore, is friendly to their best interests. It gives confidence and credit to them, one and all. Hence a vast majority of the State banks, nearly all, perhaps, except those who expect to be objects of particular favor, desire the continuance of a national bank, as an institution highly useful to themselves.

The mode in which the operations of a national institution afford security against excessive issues by local banks is not violent, coercive, or injurious. On the contrary, it is gentle, salutary, and friendly. The result is brought about by the natural and easy operation of things. The money of the Bank of the United States, having a more wide-spread credit and character, is constantly wanted for purposes of remittance. It is purchased, therefore, for this purpose, and paid for in the bills of local banks; and it may be purchased, of course, at par, or near it, if these local bills are offered in the neighborhood of their own banks, and these banks are in good credit. These local bills then return to the bank that issued them. The result is, that, while the local bills will or may supply, in great part, the local circulation (not being capable, for want of more extended credit, of being remitted to great distances), their amount is thus limited to the purposes of local circulation; and any considerable excess beyond this finds, in due season, a salutary corrective. This is one of the known benefits of the bank. Every man of business understands it, and the whole country has realized the security which this course of things has produced.

But, Sir, as to the question of the deposits, the honorable gentleman thinks he sees, at last, the curtain raised; he sees the object of the whole debate. He insists that the question of the restoration of the deposits, and the question of rechartering the bank, are the same question. It strikes me, Sir, as being

strange that the gentleman did not draw an exactly opposite inference from his own premises. He says he sees the Northern friends of the bank and the Southern opposers of the bank agreeing for the restoration of the deposits. This is true; and does not this prove that the question is a separate one? On the one question, the North and the South are together; on the other, they separate. Either their apprehensions are obtuse, or else this very statement shows the questions to be distinct.

Sir, since the gentleman has referred to the North and the South, I will venture to ask him if he sees nothing important in the aspect which the South presents? On this question of the deposits, does he not behold almost an entire unanimity in the South? How many from the Potomac to the Gulf of Mexico defend the removal? For myself, I declare that I have not heard a member of Congress from beyond the Potomac say, either in or out of his seat, that he approved the measure. Can the gentleman see nothing in this but proof that the deposit question and the question of recharter are the same? Sir, gentlemen must judge for themselves; but it appears plain enough to me that the President has lost more friends at the South by this interference with the public deposits than by any or all other measures.

I must be allowed now, Sir, to advert to a remark in the speech of the honorable member from New York on the left of the Chair,* as I find it in a morning paper. It is this: —

"Be assured, Sir, whatever nice distinctions may be drawn here as to the show of influence which expressions of the popular will upon such a subject are entitled to from us, it is possible for that will to assume a constitutional shape, which the Senate cannot misunderstand, and, understanding, will not unwisely resist."

Mr. Wright said, it should have been *share* of influence. Mr. Webster continued: —

That does not alter the sense. Mr. President, I wish to keep the avenues of public opinion, from the whole country to the Capitol, all open, broad, and straight. I desire always to know the state of that opinion on great and important subjects. From me, that opinion always has received, and always will receive, the most respectful attention and consideration. And whether

* Mr. Wright.

it be expressed by State legislatures, or by public meetings, or be collected from individual expressions, in whatever form it comes, it is always welcome. But, Sir, the legislation for the United States must be conducted here. The law of Congress must be the will of Congress, and the proceedings of Congress its own proceedings. I hope nothing intimidating was intended by this expression.

Mr. Wright intimated it was not.

Then, Sir, I forbear further remark.

Sir, there is one other subject on which I wish to raise my voice. There is a topic which I perceive is to become the general war-cry of party, on which I take the liberty to warn the country against delusion. Sir, the cry is to be raised that this is a question between the poor and the rich. I know, Sir, it has been proclaimed, that one thing was certain, that there was always a hatred on the part of the poor toward the rich; and that this hatred would support the late measures, and the putting down of the bank. Sir, I will not be silent at the threat of such a detestable fraud on public opinion. If but ten men, or one man, in the nation will hear my voice, I will still warn them against this attempted imposition.

Mr. President, this is an eventful moment. On the great questions which occupy us, we all look for some decisive movement of public opinion. As I wish that movement to be free, intelligent, and unbiased, the true manifestation of the public will, I desire to prepare the country for another appeal, which I perceive is about to be made to popular prejudice, another attempt to obscure all distinct views of the public good, to overwhelm all patriotism and all enlightened self-interest, by loud cries against false danger, and by exciting the passions of one class against another. I am not mistaken in the omen; I see the magazine whence the weapons of this warfare are to be drawn. I hear already the din of the hammering of arms preparatory to the combat. They may be such arms, perhaps, as reason, and justice, and honest patriotism cannot resist. Every effort at resistance, it is possible, may be feeble and powerless; but, for one, I shall make an effort, — an effort to be begun now, and to be carried on and continued, with untiring zeal, till the end of the contest.

Sir, I see, in those vehicles which carry to the people sentiments from high places, plain declarations that the present controversy is but a strife between one part of the community and another. I hear it boasted as the unfailing security, the solid ground, never to be shaken, on which recent measures rest, *that the poor naturally hate the rich.* I know that, under the cover of the roofs of the Capitol, within the last twenty-four hours, among men sent here to devise means for the public safety and the public good, it has been vaunted forth, as matter of boast and triumph, that one cause existed powerful enough to support every thing and to defend every thing; and that was, *the natural hatred of the poor to the rich.*

Sir, I pronounce the author of such sentiments to be guilty of attempting a detestable fraud on the community; a double fraud; a fraud which is to cheat men out of their property and out of the earnings of their labor, by first cheating them out of their understandings.

"The natural hatred of the poor to the rich!" Sir, it shall not be till the last moment of my existence, — it shall be only when I am drawn to the verge of oblivion, when I shall cease to have respect or affection for any thing on earth, — that I will believe the people of the United States capable of being effectually deluded, cajoled, and *driven about in herds*, by such abominable frauds as this. If they shall sink to that point, if they so far cease to be men, thinking men, intelligent men, as to yield to such pretences and such clamor, they will be slaves already; slaves to their own passions, slaves to the fraud and knavery of pretended friends. They will deserve to be blotted out of all the records of freedom; they ought not to dishonor the cause of self-government, by attempting any longer to exercise it; they ought to keep their unworthy hands entirely off from the cause of republican liberty, if they are capable of being the victims of artifices so shallow, of tricks so stale, so threadbare, so often practised, so much worn out, on serfs and slaves.

"The natural hatred of the poor against the rich!" "The danger of a moneyed aristocracy!" "A power as great and dangerous as that resisted by the Revolution!" "A call to a new declaration of independence!" Sir, I admonish the people against the object of outcries like these. I admonish every industrious laborer in the country to be on his guard against such

delusion. I tell him the attempt is to play off his passions against his interests, and to prevail on him, in the name of liberty, to destroy all the fruits of liberty; in the name of patriotism, to injure and afflict his country; and in the name of his own independence, to destroy that very independence, and make him a beggar and a slave. Has he a dollar? He is advised to do that which will destroy half its value. Has he hands to labor? Let him rather fold them, and sit still, than be pushed on, by fraud and artifice, to support measures which will render his labor useless and hopeless.

Sir, the very man, of all others, who has the deepest interest in a sound currency, and who suffers most by mischievous legislation in money matters, is the man who earns his daily bread by his daily toil. A depreciated currency, sudden changes of prices, paper money, falling between morning and noon, and falling still lower between noon and night, — these things constitute the very harvest-time of speculators, and of the whole race of those who are at once idle and crafty; and of that other race, too, the Catilines of all times, marked, so as to be known for ever by one stroke of the historian's pen, *those greedy of other men's property and prodigal of their own.* Capitalists, too, may outlive such times. They may either prey on the earnings of labor, by their *cent. per cent.*, or they may hoard. But the laboring man, what can he hoard? Preying on nobody, he becomes the prey of all. His property is in his hands. His reliance, his fund, his productive freehold, his all, is his labor. Whether he work on his own small capital, or another's, his living is still earned by his industry; and when the money of the country becomes depreciated and debased, whether it be adulterated coin or paper without credit, that industry is robbed of its reward. He then labors for a country whose laws cheat him out of his bread. I would say to every owner of every quarter-section of land in the West, I would say to every man in the East who follows his own plough, and to every mechanic, artisan, and laborer in every city in the country, — I would say to every man, everywhere, who wishes by honest means to gain an honest living, "Beware of wolves in sheep's clothing. Whoever attempts, under whatever popular cry, to shake the stability of the public currency, bring on distress in money matters, and drive the country into the use of paper money, stabs your interest and your happiness to the heart."

The herd of hungry wolves who live on other men's earnings will rejoice in such a state of things. A system which absorbs into their pockets the fruits of other men's industry is the very system for them. A government that produces or countenances uncertainty, fluctuations, violent risings and fallings in prices, and, finally, paper money, is a government exactly after their own heart. Hence these men are always for change. They will never let well enough alone. A condition of public affairs in which property is safe, industry certain of its reward, and every man secure in his own hard-earned gains, is no paradise for them. Give them just the reverse of this state of things; bring on change, and change after change; let it not be known to-day what will be the value of property to-morrow; let no man be able to say whether the money in his pockets at night will be money or worthless rags in the morning; and depress labor till double work shall earn but half a living, — give them this state of things, and you give them the consummation of their earthly bliss.

Sir, the great interest of this great country, the producing cause of all its prosperity, is labor! labor! labor! We are a laboring community. A vast majority of us all live by industry and actual employment in some of their forms. The Constitution was made to protect this industry, to give it both encouragement and security; but, above all, security. To that very end, with that precise object in view, power was given to Congress over the currency, and over the money system of the country. In forty years' experience, we have found nothing at all adequate to the beneficial execution of this trust but a well-conducted national bank. That has been tried, returned to, tried again, and always found successful. If it be not the proper thing for us, let it be soberly argued against; let something better be proposed; let the country examine the matter coolly, and decide for itself. But whoever shall attempt to carry a question of this kind by clamor, and violence, and prejudice; whoever would rouse the people by appeals, false and fraudulent appeals, to their love of independence, to resist the establishment of a useful institution, because it is a bank, and deals in money, and who artfully urges these appeals wherever he thinks there is more of honest feeling than of enlightened judgment, — means nothing but deception. And whoever has the wickedness to conceive, and

the hardihood to avow, a purpose to break down what has been found, in forty years' experience, essential to the protection of all interests, by arraying one class against another, and by acting on such a principle as *that the poor always hate the rich*, shows himself the reckless enemy of all. An enemy to his whole country, to all classes, and to every man in it, he deserves to be marked especially *as the poor man's curse!*

Mr. President, I feel that it becomes me to bring to the present crisis all of intellect, all of diligence, all of devotion to the public good, that I possess. I act, Sir, in opposition to nobody. I desire rather to follow the administration, in a proper remedy for the present distress, than to lead. I have felt so from the beginning, and until the declaration of yesterday made it certain that there is no further measure to be proposed. The expectation is, that the country will get on under the present state of things. Being myself entirely of a different opinion, and looking for no effectual relief until some other measure is adopted, I shall, nevertheless, be most happy to be disappointed. But if I shall not be mistaken, if the pressure shall continue, and if the indications of general public sentiment shall point in that direction, I shall feel it my duty, let the consequences be what they may, to propose a law for *altering and continuing the charter of the Bank of the United States.*

On Saturday, the 22d of February, in a debate on presenting a memorial from Maine, Mr. Forsyth having, on the day before, described what he understood to be the experiment which the executive government was trying in regard to the public deposits, Mr. Webster addressed the Senate as follows.

Mr. President, — The honorable member from Georgia stated yesterday, more distinctly than I have before learned it, what that experiment is which the government is now trying on the revenues and the currency, and, I may add, on the commerce, manufactures, and agriculture of this country. If I rightly apprehend him, this experiment is an attempt to return to an exclusive specie currency, first, by employing the State banks

as a substitute for the Bank of the United States; and then by dispensing with the use of the State banks themselves.

This, Sir, is the experiment. I thank the gentleman for thus stating its character. He has done his duty, and dealt fairly with the people, by this exhibition of what the views of the executive government are, at this interesting moment. It is certainly most proper that the people should see distinctly to what end or for what object it is that so much suffering is already upon them, and so much more already in visible and near prospect.

And now, Sir, is it possible, — is it possible that twelve millions of intelligent people can be expected voluntarily to subject themselves to severe distress, of unknown duration, for the purpose of making trial of an experiment like this? Will a nation that is intelligent, well informed of its own interest, enlightened, and capable of self-government, submit to suffer embarrassment in all its pursuits, loss of capital, loss of employment, and a sudden and dead stop in its onward movement in the path of prosperity and wealth, until it shall be ascertained whether this new-hatched theory shall answer the hopes of those who have devised it? Is the country to be persuaded to bear every thing, and bear patiently, until the operation of such an experiment, adopted for such an avowed object, and adopted, too, without the co-operation or consent of Congress, and by the executive power alone, shall exhibit its results?

In the name of the hundreds of thousands of our suffering fellow-citizens, I ask, for what reasonable end is this experiment to be tried? What great and good object, worth so much cost, is it to accomplish? What enormous evil is to be remedied by all this inconvenience and all this suffering? What great calamity is to be averted? Have the people thronged our doors, and loaded our tables with petitions for relief against the pressure of some political mischief, some notorious misrule, which this experiment is to redress? Has it been resorted to in an hour of misfortune, calamity, or peril, to save the state? Is it a measure of remedy, yielded to the importunate cries of an agitated and distressed nation? Far, Sir, very far from all this. There was no calamity, there was no suffering, there was no peril, when these measures began. At the moment when this experiment was entered upon, these twelve millions of people

were prosperous and happy, not only beyond the example of all others, but even beyond their own example in times past.

There was no pressure of public or private distress throughout the whole land. All business was prosperous, all industry was rewarded, and cheerfulness and content universally prevailed. Yet, in the midst of all this enjoyment, with so much to heighten and so little to mar it, this experiment comes upon us, to harass and oppress us at present, and to affright us for the future. Sir, it is incredible; the world abroad will not believe it; it is difficult even for us to credit, who see it with our own eyes, that the country, at such a moment, should put itself upon an experiment fraught with such immediate and overwhelming evils, and threatening the property and the employments of the people, and all their social and political blessings, with severe and long-enduring future inflictions.

And this experiment, with all its cost, is to be tried, for what? Why, simply, Sir, to enable us to try another "experiment"; and that other experiment is, to see whether an exclusive specie currency may not be better than a currency partly specie and partly bank paper! The object which it is hoped we may effect, by patiently treading this path of endurance, is to banish all bank paper, of all kinds, and to have coined money, and coined money only, as the actual currency of the country!

Now, Sir, I altogether deny that such an object is at all desirable, even if it could be attained. I know, indeed, that all paper ought to circulate on a specie basis; that all bank-notes, to be safe, must be convertible into gold and silver at the will of the holder; and I admit, too, that the issuing of very small notes by many of the State banks has too much reduced the amount of specie actually circulating. It may be remembered that I called the attention of Congress to this subject in 1832, and that the bill which then passed both houses for renewing the bank charter contained a provision designed to produce some restraint on the circulation of very small notes. I admit there are conveniences in making small payments in specie; and I have always not only admitted, but contended, that, if all issues of bank-notes under five dollars were discontinued, much more specie would be retained in the country, and in the circulation; and that great security would result from this

But we are now debating about an *exclusive* specie currency; and I deny that an exclusive specie currency is the best currency for any highly commercial country; and I deny, especially, that such a currency would be best suited to the condition and circumstances of the United States. With the enlightened writers and practical statesmen of all commercial communities in modern times, I have supposed it to be admitted that a well regulated, properly restrained, safely limited paper currency, circulating on an adequate specie basis, was a thing to be desired, a political public advantage to be obtained, if it might be obtained; and, more especially, I have supposed that in a new country, with resources not yet half developed, with a rapidly increasing population and a constant demand for more and more capital, — that is to say, in just such a country as the United States are, I have supposed that it was admitted that there are particular and extraordinary advantages in a safe and well regulated paper currency; because in such a country well regulated bank paper not only supplies a convenient medium of payments and of exchange, but also, by the expansion of that medium in a reasonable and safe degree, the amount of circulation is kept more nearly commensurate with the constantly increasing amount of property; and an extended capital, in the shape of credit, comes to the aid of the enterprising and the industrious. It is precisely on this credit, created by reasonable expansion of the currency in a new country, that men of small capital carry on their business. It is exactly by means of this, that industry and enterprise are stimulated. If we were driven back to an exclusively metallic currency, the necessary and inevitable consequence would be, that all trade would fall into the hands of large capitalists. This is so plain, that no man of reflection can doubt it. I know not, therefore, in what words to express my astonishment, when I hear it said that the present measures of government are intended for the good of the many instead of the few, for the benefit of the poor, and against the rich; and when I hear it proposed, at the same moment, to do away with the whole system of credit, and place all trade and commerce, therefore, in the hands of those who have adequate capital to carry them on without the use of any credit at all. This, Sir, would be dividing society, by a precise, distinct, and well-defined line, into two classes; first, the small class, who have

competent capital for trade, when credit is out of the question; and, secondly, the vastly numerous class of those whose living must become, in such a state of things, a mere manual occupation, without the use of capital or of any substitute for it.

Now, Sir, it is the effect of a well regulated system of paper credit to break in upon this line thus dividing the many from the few, and to enable more or less of the more numerous class to pass over it, and to participate in the profits of capital by means of a safe and convenient substitute for capital; and thus to diffuse far more widely the general earnings, and therefore the general prosperity and happiness, of society. Every man of observation must have witnessed, in this country, that men of heavy capital have constantly complained of bank circulation, and a consequent credit system, as injurious to the rights of capital. They undoubtedly feel its effects. All that is gained by the use of credit is just so much subtracted from the amount of their own accumulations, and so much the more has gone to the benefit of those who bestow their own labor and industry on capital in small amounts. To the great majority, this has been of incalculable benefit in the United States; and therefore, Sir, whoever attempts the entire overthrow of the system of bank credit aims a deadly blow at the interest of that great and industrious class, who, having some capital, cannot, nevertheless, transact business without some credit. He can mean nothing else, if he have any intelligible meaning at all, than to turn all such persons over to the long list of mere manual laborers. What else can they do, with not enough of absolute capital, and with no credit? This, Sir, this is the true tendency and the unavoidable result of these measures, which have been undertaken with the patriotic object of assisting the poor against the rich!

I am well aware that bank credit may be abused. I know that there is another extreme, exactly the opposite of that of which I have now been speaking, and no less sedulously to be avoided. I know that the issue of bank paper may become excessive; that depreciation will then follow; and that the evils, the losses, and the frauds consequent on a disordered currency fall on the rich and the poor together, but with especial weight of ruin on the poor. I know that the system of bank credit must always rest on a specie basis, and that it constantly needs to be strictly

guarded and properly restrained; and it may be so guarded and restrained. We need not give up the good which belongs to it, through fear of the evils which may follow from its abuse. We have the power to take security against these evils. It is our business, as statesmen, to adopt that security; it is our business, not to prostrate, or attempt to prostrate, the system, but to use those means of precaution, restraint, and correction, which experience has sanctioned, and which are ready at our hands.

It would be to our everlasting reproach, it would be placing us below the general level of the intelligence of civilized states, to admit that we cannot contrive means to enjoy the benefits of bank circulation, and of avoiding, at the same time, its dangers. Indeed, Sir, no contrivance is necessary. It is *contrivance*, and the love of contrivance, that spoil all. We are destroying ourselves by a remedy which no evil called for. We are ruining perfect health by nostrums and quackery. We have lived hitherto under a well constructed, practical, and beneficial system; a system not surpassed by any in the world; and it seems to me to be presuming largely, largely indeed, on the credulity and self-denial of the people, to rush with such sudden and impetuous haste into new schemes and new theories, to overturn and annihilate all that we have so long found useful.

Our system has hitherto been one in which paper has been circulating on the strength of a specie basis; that is to say, when every bank-note was convertible into specie at the will of the holder. This has been our guard against excess. While banks are bound to redeem their bills by paying gold and silver on demand, and are at all times able to do this, the currency is safe and convenient. Such a currency is not paper money, in its odious sense. It is not like the Continental paper of Revolutionary times; it is not like the worthless bills of banks which have suspended specie payments. On the contrary, it is the representative of gold and silver, and convertible into gold and silver on demand, and therefore answers the purposes of gold and silver; and so long as its credit is in this way sustained, it is the cheapest, the best, and the most convenient circulating medium. I have already endeavored to warn the country against irredeemable paper; against the paper of banks which do not pay specie for their own notes; against that miserable, abominable, and

fraudulent policy, which attempts to give value to any paper, of any bank, one single moment longer than such paper is redeemable on demand in gold and silver. I wish most solemnly and earnestly to repeat that warning. I see danger of that state of things ahead. I see imminent danger that a portion of the State banks will stop specie payments. The late measure of the Secretary, and the infatuation with which it seems to be supported, tend directly and strongly to that result. Under pretence, then, of a design to return to a currency which shall be all specie, we are likely to have a currency in which there shall be no specie at all. We are in danger of being overwhelmed with irredeemable paper, mere paper, representing not gold nor silver; no, Sir, representing nothing but broken promises, bad faith, bankrupt corporations, cheated creditors, and a ruined people. This, I fear, Sir, may be the consequence, already alarmingly near, of this attempt, unwise if it be real, and grossly fraudulent if it be only pretended, of establishing an exclusively hard-money currency.

But, Sir, if this shock could be avoided, and if we could reach the object of an exclusive metallic circulation, we should find in that very success serious and insurmountable inconveniences. We require neither irredeemable paper, nor yet exclusively hard money. We require a mixed system. We require specie, and we require, too, good bank paper, founded on specie, representing specie, and convertible into specie on demand. We require, in short, just such a currency as we have long enjoyed, and the advantages of which we seem now, with unaccountable rashness, about to throw away.

I avow myself, therefore, decidedly against the object of a return to an exclusive specie currency. I find great difficulty, I confess, in believing any man serious in avowing such an object. It seems to me rather a subject for ridicule, at this age of the world, than for sober argument. But if it be true that any are serious for the return of the gold and silver age, I am seriously against it.

Let us, Sir, anticipate, in imagination, the accomplishment of this grand experiment. Let us suppose that, at this moment, all bank paper were out of existence, and the country full of specie. Where, Sir, should we put it, and what should we do with it? Should we ship it, by cargoes, every day, from New York

to New Orleans, and from New Orleans back to New York? Should we encumber the turnpikes, the railroads, and the steamboats with it, whenever purchases and sales were to be made in one place of articles to be transported to another? The carriage of the money would, in some cases, cost half as much as the carriage of the goods. Sir, the very first day, under such a state of things, we should set ourselves about the creation of banks. This would immediately become necessary and unavoidable. We may assure ourselves, therefore, without danger of mistake, that the idea of an exclusively metallic currency is totally incompatible, in the existing state of the world, with an active and extensive commerce. It is inconsistent, too, with the greatest good of the greatest number; and therefore I oppose it.

But, Sir, how are we to get through the first experiment, so as to be able to try that which is to be final and ultimate, that is to say, how are we to get rid of the State banks? How is this to be accomplished? Of the Bank of the United States, indeed, we may free ourselves readily; but how are we to annihilate the State banks? We did not speak them into being; we cannot speak them out of being. They did not originate in any exercise of our power; nor do they owe their continuance to our indulgence. They are responsible to the States; to us they are irresponsible. We cannot act upon them; we can only act with them; and the expectation, as it would appear, is, that, by zealously coöperating with the government in carrying into operation its new theory, they may disprove the necessity of their own existence, and fairly work themselves out of the world! Sir, I ask once more, Is a great and intelligent community to endure patiently all sorts of suffering for fantasies like these? How charmingly practicable, how delightfully probable, all this looks!

I find it impossible, Mr. President, to believe that the removal of the deposits arose in any such purpose as is now avowed. I believe all this to be an after-thought. The removal was resolved on as a strong measure against the bank; and now that it has been attended with consequences not at all apprehended from it, instead of being promptly retracted, as it should have been, it is to be justified on the ground of a grand experiment, above the reach of common sagacity, and dropped down, as it

were, from the clouds, "to witch the world with noble policy." It is not credible, not possible, Sir, that, six months ago, the administration suddenly started off to astonish mankind with its new inventions in politics, and that it then began its magnificent project by removing the deposits as its first operation. No, Sir, no such thing. The removal of the deposits was a blow at the bank, and nothing more; and if it had succeeded, we should have heard nothing of any project for the final putting down of all State banks. No, Sir, not one word. We should have heard, on the contrary, only of their usefulness, their excellence, and their exact adaptation to the uses and necessities of this government. But the experiment of making successful use of State banks having failed, completely failed, in this the very first endeavor; the State banks having already proved themselves not able to fill the place and perform the duties of a national bank, although highly useful in their appropriate sphere; and the disastrous consequences of the measures of government coming thick and fast upon us, the professed object of the whole movement is at once changed, and the cry now is, Down with all the State banks! Down with all the State banks! and let us return to our embraces of solid gold and solid silver!

Sir, I have no doubt that, if there are any persons in the country who have seriously wished for such an event as the extinction of all banks, they have not, nevertheless, looked for the absence of all paper circulation. They have only looked for issues of paper from another quarter. We have already had distinct intimations that paper might be issued on the foundation of the *revenue*. The treasury of the United States is intended to become the Bank of the United States, and the Secretary of the Treasury is meant to be the great national banker. Sir, to say nothing of the crudity of such a notion, I may be allowed to make one observation upon it. We have, heretofore, heard much of the danger of consolidation, and of the great and well-grounded fear of the union of all powers in this government. Now, Sir, when we shall be brought to the state of things in which all the circulating paper of the country shall be issued directly by the treasury department, under the immediate control of the executive, we shall have consolidation with a witness!

Mr. President, this experiment will not amuse the people of this country. They are quite too serious to be amused. Their suffering is too intense to be sported with. Assuredly, Sir, they will not be patient as bleeding lambs under the deprivation of great present good, and the menace of unbearable future evils. They are not so unthinking, so stupid, I may almost say, as to forego the rich blessings now in their actual enjoyment, and trust the future to the contingencies and the chances which may betide an unnecessary and a wild experiment. They will not expose themselves at once to injury and to ridicule. They will not buy reproach and scorn at so dear a rate. They will not purchase the pleasure of being laughed at by all mankind at a price quite so enormous.

Mr. President, the objects avowed in this most extraordinary measure are altogether undesirable. The end, if it could be obtained, is an end fit to be strenuously avoided; and the process adopted to carry on the experiment, and to reach that end (which it can never attain, and which, in that respect, wholly fails), does not fail, meantime, to spread far and wide a deep and general distress, and to agitate the country beyond any thing which has heretofore happened to us in a time of peace.

Sir, the people, in my opinion, will not support this experiment. They feel it to be afflictive, and they see it to be ridiculous; and ere long, I verily believe, they will sweep it away with the resistless breath of their own voice, and bury it up with the great mass of the detected delusions and rejected follies of other times. I seek, Sir, to shun all exaggeration. I avoid studiously all inflammatory over-statement, and all emblazoning. But I beseech gentlemen to open their eyes and their ears to what is passing in the country, and not to deceive themselves with the hope that things can long remain as they are, or that any beneficial change will come until the present policy shall be totally abandoned. I attempted, Sir, the other day, to describe shortly the progress of the public distress. Its first symptom was spasm, contraction, agony. It seized first the commercial and trading classes. Some survive it, and some do not. But those who, with whatever loss, effort, and sacrifice, get through the crisis without absolute bankruptcy, take good care to make no new engagements till there shall be a change of times. They abstain from all further undertakings; and this brings the

pressure immediately home to those who live by their employments. That great class now begin to feel the distress. Houses, warehouses, and ships are not now, as usual, put under contract in the cities. Manufacturers are beginning to dismiss their hands on the sea-coast and in the interior; and our artisans and mechanics, acting for themselves only, are likely soon to feel a severe want of employment in their several occupations.

This, Sir, is the real state of things. It is a state of things which is daily growing worse and worse. It calls loudly for remedy; the people demand remedy, and they are likely to persist in that demand till remedy shall come. For one, I have no new remedy to propose. My sentiments are known. I am for rechartering the bank, for a longer or a shorter time, and with more or less of modification. I am for trying no new experiments on the property, the employments, and the happiness of the whole people.

Our proper course appears to me to be as plain and direct as the Pennsylvania Avenue. The evil which the country endures, although entirely new in its extent, its depth, and its severity, is not new in its class. Other such like evils, but of much milder form, we have felt in former times. In former times, we have been obliged to encounter the pernicious effects of a disordered currency, of a general want of confidence, and of depreciated State bank paper. To these evils we have applied the remedy of a well-constituted national bank, and have found it effectual. I am for trying it again. Approved by forty years' experience, sanctioned by all successive administrations, and by Congress at all times, and called for, as I verily believe, at this very moment, by a vast majority of the people, on what ground do we resist the remedy of a national bank? It is painful, Sir, most painful, to allude to the extraordinary position of the different branches of the government; but it is necessary to allude to it. This house has once passed a bill for rechartering the present bank. The other house has also passed it, but it has been negatived by the President; and it is understood that strong objections exist with the executive to any bank incorporated, or to be incorporated, by Congress.

Sir, I think the country calls, and has a right to call, on the executive to reconsider these objections, if they do exist. Peremptory objections to all banks created by Congress have not

yet been formally announced. I hope they will not be. I think the country demands a revision of any opinions which may have been formed on this matter, and requires, in its own name, and for the sake of the suffering people, that one man's opinion, however elevated, may not oppose the general judgment. No man in this country should say, in relation to a subject of such immense interest, that his single will shall be the law.

It does not become any man, in a government like this, to stand proudly on his own opinion, against the whole country. I shall not believe, until it shall be so proved, that the executive will so stand. He has himself more than once recommended the subject to the consideration of the people, as a subject to be discussed, reasoned on, and decided. And if the public will, manifested through its regular organs, the houses of Congress, shall demand a recharter for a longer or a shorter time, with modifications to remove reasonable and even plausible objections, I am not prepared to believe that the decision of the two houses, thus acting in conformity to the known will of the people, will meet a flat negative. I shall not credit that, till I see it. I certainly shall propose, ere long, if no change or no other acceptable proposition be made, to make the trial. As I see no other practical mode of relief, I am for putting this to the test. The first thing to be done is to approve or disapprove the Secretary's reasons. Let us come to the vote, and dispose of those reasons. In the mean time, public opinion is manifesting itself. It appears to me to grow daily stronger and stronger. The moment must shortly come when it will be no longer doubtful whether the general public opinion does call for a recharter of the bank. When that moment comes, I am for passing the measure, and shall propose it. I believe it will pass this house; I believe it cannot be, and will not be, defeated in the other, unless relief appears in some other form.

Public opinion will have its way in the houses of legislation and elsewhere. The people are sovereign; and whatever they determine to obtain must be yielded to them. This is my belief, and this is my hope. I am for a bank as a measure of expediency, and, under our present circumstances, a measure of necessity. I yield to no new-fangled opinions, to no fantastical experiments. I stand by the tried policy of the country. I go for the safety of property, for the protection of industry, for the

security of the currency. And, for the preservation of all these great ends, I am for a bank; and, as the measure most likely to succeed, I am for continuing this bank, with modifications, for a longer or a shorter period. This is the measure which I shall propose, and on this question I refer myself, without hesitation, to the decision of the country.

At a subsequent period of the same debate, in answer to observations of Mr. Forsyth, Mr. Webster said: —

The gentleman asks, What could be done if this house should pass a bill renewing the bank charter, and the other house should reject it? Sir, all I can say to this is, that the question would then be one between that other house and the people. I speak, Sir, of that honorable house with the same respect as of this. Neither is likely to be found acting, for a long time, on such a question as this, against the clear and well-ascertained sense of the country. Depend upon it, Sir, depend upon it, this "experiment" cannot succeed. It will fail, it has failed, it is a complete failure already.

Something, then, is to be done, and what is it? Congress cannot adjourn, leaving the country in its present condition. This is certain. Each house, then, as I think, will be obliged to propose something, or to concur in something. Public opinion will require it. Negative votes settle nothing. If either house should vote against a bank to-day, nothing would be determined by it, except for the moment. The proposition would be renewed, or something else proposed. The great error lies in imagining that the country will be quieted and settled, if one house, or even both, should pass votes approving the conduct of the Secretary in removing the public deposits. This is a grand mistake. The disturbing and exciting causes exist, not in men's opinions, but in men's affairs. It is not a question of theoretic right or wrong, but a question of deep suffering, and of necessary relief. No votes, no decisions, still less any debates in Congress, will restore the country to its former condition *without the interposition and aid of some positive measure of relief.* Such a measure will be proposed; it will, I trust, pass this

house. Should it be rejected elsewhere, the consequences will not lie at our door. But I have the most entire belief, that, from absolute necessity, and from the imperative dictate of the public will, a proper measure must pass, and will pass, into the form of law.

The honorable gentleman, like others, always takes it for granted, as a settled point, that the people of the United States have decided that the present bank shall not be renewed. I believe no such thing. I see no evidence of any such decision. It is easy to assume all this. The Secretary assumed it, and gentlemen follow his example, and assume it themselves. Sir, I think the lapse of a few months will correct the mistake, both of the Secretary and of the gentlemen.

The honorable member has suggested another idea, calculated, perhaps, to produce a momentary impression, which has been urged in other quarters. It is, that, if the bank charter be renewed now, it will necessarily become perpetual. Sir, if the gentleman only means that, if we now admit the necessity or utility of a national bank, we must always, for similar reasons, have one hereafter, I say with frankness, that, in my opinion, until some great change of circumstances shall take place, a national institution of that kind will always be found useful. But if he desires to produce a belief that a renewal of its charter now would make *this* bank perpetual, under its present form, or under any form, I do not at all concur in his opinion. Sir, nobody proposes to renew the bank, except for a limited period. At the expiration of that period, it will be in the power of Congress, just as fully as it is now, to continue its charter still further, or to amend it, or let it altogether expire. And what harm or danger is there in this? The charter of the Bank of England, always granted for limited periods, has been often renewed, with various conditions and alterations, and has now existed, I think, under these renewals, nearly one hundred and fifty years. Its last term of years was about expiring recently, and the Reform Parliament have seen no wiser way of proceeding than to incorporate into it such amendments as experience had shown necessary, and to give it a new lease. And this, as it appears to me, is precisely the course which the interest of the people of the United States requires in regard to our own bank. The danger of perpetuity is wholly unfounded, and all alarm on that score

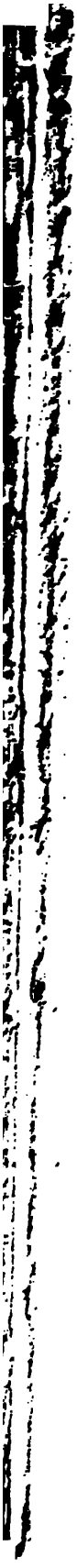
is but false alarm. The bank, if renewed, will be as much subject to the will and pleasure of Congress as a new bank with a similar charter, and will possess no more claim than a new one for further continuance hereafter.

The honorable gentleman quotes me, Mr. President, as having said, on a former occasion, that, if Congress shall refuse to recharter the bank, the country will yet live through the difficulty. Why, certainly, Sir, I trust it will live through it. I believe the country capable of self-government, and that they will remedy not only such evils as they cannot live through, but other evils also, which they could live through, and which they would bear, if necessary, but which, nevertheless, being great evils, and wholly unnecessary, they are not disposed to endure. Is the gentleman entirely satisfied, if he can only persuade himself that the country can live under the evils inflicted on it by these measures of the executive government? Sir, I doubt not the people will live through their difficulties; and one way of living through them is to put a speedy close to them. The people have only to will it, and all their present sufferings are at an end. These sufferings flow from no natural cause. They come not from famine or pestilence, nor from invasion or war, nor from any external public calamity. They spring directly and exclusively from the unwise and unjustifiable interference of the Secretary of the Treasury with the public moneys. By this single act, he has disordered the revenue, deranged the currency, broken up commercial confidence, created already a thousand bankruptcies, and brought the whole business of the country into a state of confusion and dismay. This is a political evil, and a political evil only. It arises from mismanagement entirely and exclusively. This mismanagement, this sole cause of the whole distress, the people can correct. They have but to speak the word, and it is done. They have but to say so, and the public treasure will return to its proper place, and the public prosperity resume its accustomed course.

They have but to utter this supreme command, these words of high behest; they have but to give to the public voice that imperative unity which all must hear, and all must obey; and the reign of misrule and the prevalence of disaster will expire together. Public sufferings will then be removed by removing their cause. Political mischiefs will be repaired by political re-

dress. That which has been unwisely done will be wisely undone; and this is the way, Sir, in which an enlightened and independent people *live through their difficulties.* And, Sir, I look to no other source for relief; but I look confidently to this. I dare not, indeed, under present appearances, predict an immediate termination of present trouble; that would be rash. It may take time for the people to understand one another in different parts of the country, and to unite in their objects and in their means. Circumstances may delay this union of purpose and union of effort. I know there are powerful causes, now in full activity, which may not only prolong, but increase, the commotion of the political elements. I see indications that a storm is on the wing. I am not ignorant of the probable approach of a crisis in which contending parties, and contending passions, are to be intensely excited; in which the great interests of the country are all to be deeply convulsed; and which, in its consequences, may even touch the action of the government itself. In preparing to meet such a crisis, should it come, I found myself on those great truths which our own experience and the experience of all other nations have established. I yield to no new-fangled theories, to no wild and rash experiments. I stand, too, upon those high duties which the Constitution of the country has devolved upon us; and thus holding on, and holding fast, by acknowledged truth and manifest duty, I shall take events as they come; and although these black and portentous clouds may break on our heads, and the tempest overpower us for a while, still that can never be for ever overwhelmed, that can never go finally to the bottom, which truth and duty bear up.

Appendix



Notes of the Reply to Hayne

JANUARY 26, 1830.[1]

[*a*]

A PROVISO, that that act should not be construed to admit or affirm the power of Congress, to make roads & canals, on their own authority, — *he voted ag^t the proviso.* [34]

A proviso that the consent of the States should first be obtained; *he voted ag^t that.* [34]

A proviso that all monies expended for roads or canals, shall be apportioned among the States according to the proportion of direct taxes; *he voted ag^t that proviso.* [34]

The bill appropriated 30,000 Dlrs, for survey of such routes for roads & canals, as Presid^t may think of National Importance, in a commercial or military view — or for transporting mails — *he voted for the Bill.* [33, 34]

[*b*]

As to how, why, when — [27] 99000 hindrances act on all the people.

What the danger of leaving it to the States — No danger!!

Consolidation [36]

My construction [37]

[1] From the original manuscript, partly in Mr. Webster's handwriting, in the New Hampshire Historical Society. It is endorsed, in Mr. Webster's hand, "These papers belong to my Hayne Speech." The notes are incomplete, difficult to decipher, and were received by the New Hampshire Historical Society on loose, unnumbered sheets. They are here printed, as arranged by the President of the Society, Hon. Charles H. Bell, Ex-Governor of New Hampshire. They do not correspond to the order of the subject matter of the Speech, and it seems probable that Mr. Webster did not adhere strictly to his notes, or use all of them. In order to assist the reader the pages of the Speech to which they appear to relate, are, wherever possible, inserted in brackets. The letters *a*, *b*, etc., in brackets, indicate the order in which the sheets are arranged in the New Hampshire Historical Society papers.

as to effects of construction —
I did not say there was an empire [72, 73]
The people have the same remedy g[t] abuse, in this Gov[t] — as any other —
— the ballot boxes —
— the power of amen[t] —
— the ultima ratio —
— "interpose, not to destroy, but to preserve."
☞ Suppose a case, not to be brought into Court, — as to States making the Consolidation —
There's no compact between sovereigns [79]
I said — of no power to seize, no Govt,
not a treaty [common question [80]
common duty

[c]

Suppose a tax of 20 millions —
an extreme case
— now it is just as impossible that this sh[d] happen — &c &c.
— & that States should interfere, in [80]
"a gross abuse" —
"an extreme case"
"checks & balances [80]
4 Judges may stop a law
1 Judge may hang either of us, if we commit treason

[d]

As to Townships — sold by, in 1878 [1778]
Navigation of Mississippi —
As to Hemp —
Depredation —
Mr. Hayne
a right to ponder — comes in wrath —
Did I think Benton an overmatch [6, 7]
Murdered coalition — floating like Banquo's ghost — (not so good as common Newspaper) menace to discomfit me [8]
says he did not refer to New England — [19]
(his manifesto / proclamation of war, more bold than his war is vigorous [4]
— Col. Barre — [20]

[e]

A certain Dane [17]
a member of Hartford Convention — power to make

New States — [17]
just what I said in 1825 — [18]
"No great source of revenue"
"Should not hug it, as a great treasure" [21]
— as to its being a common benefit [21]
So I think — I have voted accordingly [21]
my votes, as to roads — canals — & schools [25]
what interest has S° Carolina — [22]
(she has)
Reproach to the *So* feeling bound by their oaths — [25]
(wd I give up — my own Resolutions)
(The Memorial I presented the day before yesterday) [25]

[*f*]

when, & where, & how — have we supported the Int. to the West — [26]
Change took place in 1825 [26]
Coalition [8, 37, 40]
Manufactures in the East — Impr^t in the West. — [26]
Coalition & Banquo's ghost again
Public Debt — waits for practice [36]
public debt — he altogether misinterprets me [36]

[*g*]

Mr. King [16]
1. conditions of V^a grant now complied with [16]
Resolution Oct. 1780
1 vol 475
Deed cession 472 [16]
Recital of the V^a act, in the deed of cession.
New States to have the same rights of sovereignty
Ordinance of 1787 — not a compliance with the conditions of the grant — [16]
1. must be Slave State [12, 13]
2. these must have same rights as others — [12]
did not attempt to perform this condition —
1. They were to sell & appropriate for common use. —
Ordinance of 1787 deprived Congress of power to comply with the conditions —
Nations hold lands by sovereignty —
These States not sovereign, because they do not hold the land.

Congress might have kept a Territorial Gov^t till lands all sold.

[h]

The restraint laid on Ohio, (by ordinance) implies that the sovereignty w^d otherwise extend to this right to land. —

They admit, they w^d have the right, if not restrained

Act of V^a 1789 — respecting Kentucky — 9 § — "no grant of land by Kentucky to interfere with V^a grants" — &c

unlocated lands to be exempt from

1 Vol. 676 —

☞ look at this — does it not cut ag^t his arg^t

Compact with Georgia void; because it is treaty, or alliance, & so g^t Constitution.

void, too, as, being a treaty, it ought to have been done by P & S

☞ Ordinance of 1787 illegal & void

☞ Compact of 1802 with Georgia — void — pretty strong grounds —

Vattell 192. — compacts — ags^t parties —

[i]

wants to know the right that Gov: had to make this compact.

could not propose a limitation, on the two other States —

case put — A makes an Ex — land — trust to son —

☞ truth is, the son goes for the whole, if father gives a foot of land —

memo — look into books to see how the sovereignty affects the soil —

scores of lead mines — in a sovereign State — makes them all tenants — vassals — all in a sovereign State —

This "violates all this Law — & endangers our liberties" —

it was to be sold — by the condition of V^a —

Suppose this Gov^t should buy out all the old States — turn them into tenants, & thus consolidate the Gov^t —

This a parallel proof.

[j]

De'n of Independence — similar case supposed here.

harassed by officers — old States not the same.

power to appt custom Houses said to be express —

so it is here "power to govern territories &c —"

Persons who go from here, are tenants — not so no tenants, in U. S.

nothing to prevent the States from buying it. —

This subject will not sleep —

men will combine, for their own interest —

☞ His whole ag[t] otherwise, that the land is unsold not for want of purchasers, but because the price is too high —

[k[1]]

RELINQUISHED LANDS.

	Acres relinquished.	Purchase Money. Dolls. Cts.
Ohio	432,875.31	1,038,615.54
Indiana	704,315.82	1,427,466.44
Illinois	697,334.89	1,401,512.06
Missouri	709,346.35	2,004,698.77
Mississippi	188,990.40	377,980.87
Alabama	1,842,534.56	8,649,400.38
Louisiana	1,698.62	3,797.25
Michigan Terr'y	25,196.94	79,844.23
	4,602,292.89	14,983,315.54

The foregoing is a statement of the Quantity of land relinquished to the U. States & the purchase money of the same under the several laws for the Relief of the purchasers of public lands passed in the years of 1821, 1822, 1823, 1824, 1826 & 1828.

The original Report of the Secretary of the Treasury dated 4th Jany 1830 accompanying the President's Message of 5th Jany to the Senate — Only partially printed document No. 11. —

[l[2]]

Virginia ceded the North Western Territory to the U. S. March 1st 1784 (vol. 4 P 344) [16]

A Committee — Jefferson Chase & Howell Apl, 1784 reported a plan for a temporary Government of the Western Territory in which there was this Article "that after the year 1800 there shall be neither slavery nor involuntary servitude in any of the said States otherwise than in punishment of crimes whereof the party shall have been convicted —" [16]

[1] The portion of the manuscript which follows, is not in Mr. Webster's handwriting.

[2] From a manuscript, endorsed in another hand, "This second sheet is in Ms of Hon. Samuel Bell."

Mr. Spaight of N. C. moved to strike out this paragraph: On the question shall the words stand. Ayes N. H., Mᵒ, R. I., Conᵗ N. Y., N. J., Pᵃ 7 States. No's Maryland, Vᵃ S. C. Divided N. C. (9 votes necessary — the votes of Vᵃ & S. C. rejected) [16]

Jefferson voted Aye, (Hardy & Mercer no) Majority of Vᵃ no [16]

P. 481 — 16 March 1785 Motion by Mr. King, seconded by Mr. Ellery, R. I. The paragraph proposed by Comᵃˢ Jefferson, Chase & Howell with this addition "*and that this regulation shall be an article of compact and remain a fundamental principle of the constitutions between the 13 original States & each of the States described in the said resolve of the 23 of Apˡ 1784*" [16]

It was Mʳ King's clause which secured the West against slavery when adopted by Mʳ Dane in the ordinance of 1787 [16]

On this question the 8 Northern States voted aye — the 4 Southern States no — [16]

Twice the Southern States rejected this provision — perseverance of North finally carried it —

[*The "When, How, and Why" Passage.*[1]]

In 1820, April 4, the law passed reduc'g price of public lands — (Vol. 6. 487)

1 Sess. 16 Cong. H. Journal 436. —

N. E. with 40 Delgts, or therabt
gave 33 Ayes — one No —

4 Old Southern States — 50 members
32 Ayes — 7 Nos —

Relief of purchasers of public lands
2 Mar. 1821 — Vol 6. 550 —

2 Sess. 16. Cong. H. Journal 288
— remits 37½ pr ct. — &c —
on passage — 18 N. E. men in favor
Southern States, 13. — —

[1] From a manuscript, in Mr. Webster's handwriting, in the Greenough Collection. See page 27 of this volume.

The Reply to Hayne

A Memorandum by Mr. Webster

JANUARY, 1830.[1]

ON the 29th day of December, 1829, in the first Session of Congress after General Jackson's election to the Presidency, the Honorable Samuel A. Foote, a Senator from Connecticut, presented to the Senate a Resolution in the following words:

"*Resolved*, that the Committee on Public Lands be instructed to inquire into the expediency of limiting, for a certain period, the sales of the Public Lands, to such lands only as have heretofore been offered for sale, and are subject to entry at the *minimum price*. And also, whether the office of Surveyor General may not be abolished, without detriment to the public interest."

It does not appear that in bringing forward this Resolution, Mr. Foote acted in concert with any other members of the Senate. When it came up for consideration, the next day (Dec. 30), the mover explained his motives in offering it. He had been induced so to do, he observed, from having, at the last Session, examined the Report of the Commission of the Land Office, by which it appeared that the quantity of land, remaining unsold, at the minimum price of $1.25 per acre exceeded 72,000,000 of acres; and from the Commissioner's report, at the present Session, the annual demand would only be for 1,000,000 of acres, to be increased of course, with the progress of population, &c.

The Resolution, although proposing inquiry only, immediately excited opposition. Mr. Benton said, it was "a Resolution to inquire into the expediency of committing a great injury upon the new States of the West," and such an inquiry ought not to be permitted. Other Western Senators expressed similar sentiments. Mr. Holmes supported the Resolution, as a mere proposition for inquiry. He thought the subject demanded inquiry.

[1] From a manuscript, in Mr. Webster's handwriting, in the Greenough Collection. This paper was probably used by Edward Everett in writing the Memoir of Webster.

Mr. Foote entirely disclaimed any hostility to the West, or any disposition to prevent emigration from the Atlantic States to that quarter.

At the end of this conversation, it was agreed, with the assent of the mover, that the consideration of the Resolution should be postponed to Monday, the 11th of January, and made the special order for that day.

The debate was resumed on Wednesday, the 13th of January; on Thursday, the Senate adjourned to Monday, the 18th; on which day Mr. Benton spoke, at large, against the Resolution. On Tuesday, the 19th, Mr. Holmes replied shortly to Mr. Benton; other members addressed the chair, in speeches of great length, and then Mr. Hayne rose and commenced his speech, which occupied the whole of the remainder of the day.

Mr. Webster at this period was much engaged in the Supreme Court of the United States. The important controversy between John Jacob Astor and the State of New York was to come on for argument on the 20th; and the argument was, in fact, commenced on that day — this controversy is known as the case of "Carver's lessees vs. John Jacob Astor," and is reported in the fourth volume of Mr. Peters' Reports, page 1st.

Leaving the court, on its adjournment, on Tuesday, the 19th, Mr. Webster came into the Senate in time to hear Mr. Hayne's speech; and it was suggested to him by several friends, among others, by Mr. Bell of New Hampshire, Mr. Chambers of Maryland, and his colleague Mr. Silsbee, that an immediate answer to Mr. Hayne was due from him. He rose immediately, therefore, on Mr. Hayne's resuming his seat, to make a reply, but gave way, on the motion of Mr. Benton for an adjournment.

Mr. Webster appeared in the Senate the next morning, Wednesday, Jan. the 20th, and the Resolution being called up, was modified, at the suggestion of Mr. Sprague and Mr. Woodbury, so as to read thus:

"*Resolved*, that the Committee on the public lands be instructed to inquire and report the quantity of the public lands remaining unsold, within each State and Territory, and whether it be expedient to limit, for a certain period the sale of the public lands to such lands only as have heretofore been offered for sale, and are now subject to entry at the minimum price; and, also, whether the office of Surveyor General, and some of the Land Offices, may not be abolished without detriment to the public interest; or whether it be expedient to adopt measures to hasten the sales, and extend more rapidly the surveys of the Public Lands."

Mr. Webster immediately proceeded. It is evident that the occasion was unexpected, and that it was met without such preparation as is usually made for the discussion of such subjects.

Mr. Webster said, on rising,

(Here insert the Speech.)

Mr. Benton followed Mr. Webster.

The next day, Thursday, Jan. 21, on resuming the debate, Mr. Chambers hoped that the Senate would consent to postpone the Resolution till Monday next, as Mr. Webster, who had engaged in, and wished to be present at, the discussion, when it should be resumed, had some unavoidable engagements out of the Senate, and could not conveniently give his attendance before Monday. Mr. Hayne said, he saw the gentleman from Massachusetts in his seat, and presumed he could make an arrangement which would enable him to be present here during the discussion to-day. He was unwilling that this subject should be postponed, until he had an opportunity of replying to some of the observations which had fallen from the gentleman yesterday. He would not deny that some things had fallen from that gentleman which rankled here (touching his heart), from which he would desire, at once, to relieve himself. The gentleman had discharged his fire in the face of the Senate. He hoped he would now afford him the opportunity of returning the shot.

Mr. Webster. I am ready to receive it. Let the discussion proceed.

Mr. Benton then rose and addressed the Senate about an hour, in continuation of the speech which he commenced yesterday in reply to Mr. Webster.

Mr. Bell now moved that the further consideration of the Resolution be postponed to Monday, but the motion was negatived: Ayes 13, Noes 18.

Mr. Hayne then took the floor, and spoke about an hour in reply to Mr. Webster's remarks of yesterday, when the Senate adjourned to Monday.

MONDAY, JAN. 25.

Mr. Hayne rose, and, in continuation of his reply to Mr. Webster, addressed the Senate for two hours and a half.

When he had concluded, Mr. Webster rose to reply. But as the hour was advanced (it being then near four o'clock), he yielded the floor to Mr. Bell, who moved an adjournment, which motion was agreed to.

Tuesday, Jan. 26, Mr. Webster commenced his reply to Mr. Hayne, which concluded the next day.

Notes of this speech, in shorthand, were taken by Mr. Gales, the senior editor of the National Intelligencer. They were written out by another hand, and the report was most remarkably accurate. It was in Mr. Webster's possession a part of one day, for revision; and then the speech went to the press. It was as follows: —

Mr. President, &c., &c.

Mr. Hayne spoke again, in reply to Mr. Webster; and on resuming his seat, Mr. Webster immediately rose in conclusion, and said: A few words, Mr. President —

The notes appended, in the printed volume, to the principal speech, may perhaps as well come in here, at the end of all.

And the following note may be added.

Mr. Foote's Resolution continued before the Senate, for a long time, as a standing subject for discussion, and came up at different days. One half the members of the Senate appear to have taken a part in the debate. At length, on the 21st day of May, Mr. Webster's motion for an indefinite postponement was put, and prevailed, and thus the whole discussion ended.

The debate, very fully reported, is contained in the Congressional Debates, of Messrs. Gales & Seaton, vol. 6, part 1st, 1829, 1830.

NOTE.

The Boston Public Library possesses a very interesting and important volume of Manuscripts, &c. relating to the Reply to Hayne. It contains: 1. The original short hand report of Webster's Reply to Hayne in the United States Senate (1830) by Joseph Gales, the Editor of the National Intelligencer. 14 pages. 2. The Speech as written out by Mrs. Gales from the shorthand report. 100 pages. 3. The Speech as prepared from the foregoing report by Mr. Webster himself, being the copy furnished to the press by him, 85 pages, more than 60 of which are in his own hand. 4. Appendix consisting of extracts from Mr. Calhoun's speeches, which followed, as Notes, in the original pamphlet report. 5. The perfected speech as printed originally, in pamphlet form, from these materials, by Gales & Seaton, 1830.

The volume also contains newspaper clippings regarding the Speech, letters to and from Mrs. Gales, a letter from Hon. Robert C. Winthrop, &c. It was purchased from Mrs. Gales by Mr. Winthrop, April 26, 1877, on behalf of subscribers, and presented to the Boston Public Library "to be preserved forever in its archives."

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